TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 197

INTERSTATE BUSSES CORPORATION,
APPELLANT,

vs.

WILLIAM H. BLODGETT, TAX COMMISSIONER OF THE STATE OF CONNECTICUT; ERNEST E. ROGERS, TREASURER OF THE STATE OF CONNECTICUT; FREDERICK M. SALMON, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT

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INDEX

	Original	Print
Record from the district court of the United States, district of Connecticut	*a*	1
Clerk's certificate (omitted in printing)	*a*	
Bill of complaint	1	1
Exhibit "A"—An act providing an excise on the use of public highways by public-service motor busses	12	8
Exhibit "B"—Notice of assessment on list of 1926	15	13
Answer	16	14

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	Original	Print
Agreed statement of facts	19	16
Statement of evidence	27	22
Appearances of counsel	27	22
Testimony of Clinton G. Nichols	27	22
Testimony of Alfred Demaris	34	26
Motion to dismiss and order allowing same	46	34
Opinion, Manton, J.	48	35
Final decree	58	42
Petition for appeal and suspension of decree	60	43
Assignments of error	62	44
Order allowing appeal and suspension of decree	63	45
Citation and service (omitted in printing)	64	
Statement of points to be relied upon and designation of parts of record to be printed	66	45

[fol. a] Clerk's certificate to transcript omitted in printing.

[fol. 1]

IN UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

In Equity. 1862

INTERSTATE BUSSES CORPORATION

vs.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut; Ernest E. Rogers, Treasurer of the State of Connecticut; Frederick M. Salmon, Comptroller of the State of Connecticut; Robbins B. Stoeckel, Commissioner of Motor Vehicles for the State of Connecticut; Robert T. Hurley, Superintendent of Police for the State of Connecticut.

BILL OF COMPLAINT

To the Honorable District Court of the United States for the District of Connecticut:

Interstate Busses Corporation, a corporation organized under, and pursuant to, the laws of the State of Connecticut, and having its principal place of business in Hartford in said State, brings this Bill of Complaint against the above named Defendants, all citizens of said State, and for its complaint alleges:

1. The Complainant is engaged in the business of transporting passengers for hire between Hartford in the State of Connecticut, and Springfield and Worcester in the State of Massachusetts, and return, and between Hartford in [fol. 2] the State of Connecticut, and Providence in the State of Rhode Island, and return, said passengers being transported only from points within the State of Connecticut to points without, or from points without to points within said State.

2. The Defendants Blodgett, Rogers and Salmon, are respectively, the Tax Commissioner, State Treasurer, and

Comptroller, of the State of Connecticut, and, as such ex officio, constitute the State Board of Equalization, in accordance with the provisions of Section 1245 of the General Statutes of Connecticut.

3. The Defendant Robbins B. Stoeckel is the Commissioner of Motor Vehicles of the State of Connecticut. The Defendant Robert T. Hurley is Superintendent of the State Police of said State.

4. Complainant further alleges the Legislature of the State of Connecticut consisting of the Senate and House of Representatives, in General Assembly convened, pursuant to authority claimed to be reposed in State General Assembly under the Constitution of the State of Connecticut, at the biennial session of said Legislature, held in 1925, enacted a pretended law or statute called "An Act Providing An Excise on the Use of Public Highways by Public Service Motor Busses." This act was approved by the Governor on June 24, 1925; and it is claimed and alleged to be effective as a law of the State of Connecticut from that date, and known as Chapter 254 of the Public Acts of 1925. A copy is annexed hereto marked "Exhibit A".

5. Under Part II of said Chapter 254 of the Public Acts of 1925, which is claimed to be applicable to the business carried on by this Complainant, the Defendants are pro- [fol. 3] posing to enforce payment of a tax or excise of one cent a mile for the total number of miles of highway over which the Complainant's motor vehicles have been operated in interstate commerce during the year 1925.

6. In furtherance of that purpose the Defendant Stoeckel, Commissioner of Motor Vehicles, on or about August 1, 1925, demanded of the Complainant a statement of its acceptance of the provisions of Part II of Chapter 254 of the Public Acts of 1925.

7. At the same time, and for the same purpose, the Defendant Stoeckel put into effect a new regulation, under authority claimed to be vested in him by the Motor Vehicle Law of Connecticut, whereby he is authorized to adopt rules and regulations for the registration of motor vehicles, by which new regulations he purported to distinguish the registration and markers of motor vehicles engaged in the

carriage of passengers in interstate commerce by a special registration and a special marker distinct from the registration and markers prescribed for public service motor vehicles generally. He, thereupon, demanded that Complainant obtain registration and markers for its vehicles engaged in interstate commerce, in accordance with such regulation, and under threat of arrest and prosecution of Complainant's drivers, if such registration was not obtained, and refused to issue such distinctive interstate registration and markers without written acceptance of the provisions of Part II of the above mentioned Act. Said written acceptance was on a printed form prescribed by the Defendant Stoeckel, as Commissioner of Motor Vehicles, and was tendered to Complainant's agent at the time of making application for the interstate markers above referred to, and was signed by said agent, without authority of this Complainant to its said agent to bind it to the ac-
[fol. 4] ceptance of the provisions of Part II of Chapter 254 of the Public Acts of 1925, and under the impression and belief of the said agent that the signing of said acceptance was a routine matter in the application for registration and markers, and that the question of the validity of this tax was one for further determination.

8. Also in furtherance of said purpose the Defendant Blodgett has demanded of the Complainant a statement of the entire mileage of its motor vehicles in Connecticut for the year ending December 31, 1925, although the above mentioned Law—Chapter 254 of the Public Acts of 1925—was not approved by the Governor until June 24, 1925.

9. This Complainant thereupon filed with the said Defendant Blodgett a statement of its mileage for the six months ending December 31, 1925, said statement being filed under protest.

10. At the further request of the Defendant Blodgett, this Complainant without prejudice filed with the Defendant Blodgett a statement of its mileage for the entire year prior to December 31, 1925, but, which statement, subsequent to its filing, was discovered to be erroneous in several particulars, because of the fact of covering a period prior to the time the law purported to become operative, correct and proper records of mileage had not been kept

by this Complainant, and said statement of mileage for the entire year was prepared by employees of Complainant who were not in its employ during the period of operation prior to July 1, 1925, and who, in preparation of said statement, erroneously assumed that the mileage for the first six months of 1925 was substantially the same for the latter six months.

11. Still in furtherance of the purpose to exact an illegal and unconstitutional tax from this Complainant, the De- [fol. 5] fendants Blodgett, Rogers and Salmon purporting to act as a Board of Equalization, claim to have adjusted and equalized the alleged tax due and payable by this Complainant to the State of Connecticut, on the basis of the erroneous return filed as aforesaid, and demanded and levied upon this Complainant the sum of $2,255.70 as an excise fee, pursuant to the provisions of Chapter 254 of the Laws of 1925, Part II thereof, and thereupon demanded the payment of that amount to the Defendant Rogers, as Treasurer of the State of Connecticut, on or before July 15, 1926. A copy of said demand is hereto annexed marked "Exhibit B."

12. Furthermore, the Complainant's busses have operated through the State of Connecticut during the year 1926, and up to the present date a mileage of upwards of 120,000 miles, so that if this alleged law is held valid, and not in contravention with Section 8, Article I, of the United States Constitution, this Complainant will have incurred at the present time a further liability of $1,200.00; and with a continually increasing liability as its interstate operation through Connecticut continues, so that there is therefore involved in this action a sum or amount of more than $3,000.00, exclusive of interest and costs.

13. Complainant further shows that all of its business in Connecticut is interstate, and consists of the carriage of passengers from points within the state to points without, or the reverse; (a) the imposition of this alleged tax based on the mileage of its motor vehicles operated in interstate commerce in Connecticut is in violation of the Commerce Clause of the Federal Constitution, and inoperative and void, as a burden on, and obstruction to, interstate commerce; (b) said Act is further in conflict with the Com-

[fol. 6] merce Clause in that by its provisions, it purports to authorize the Commissioner of Motor Vehicles to suspend the registration of Complainant's motor vehicles, and thereupon submit Complainant and its agents and employees to arrest and prosecution under the police laws of Connecticut, as operators of unregistered motor vehicles, and thereby, for the purpose of collection of a state tax, to impede, embarrass and obstruct interstate commerce. (c) Said Act is in further violation of the Commerce Clause of the Federal Constitution, Section 8, Article I, in that it constitutes an unlawful discrimination against interstate commerce, in that this alleged mileage tax is sought to be enforced only against the owners of motor vehicles operating in such commerce, the owners of all other vehicles and of all other business being exempt therefrom. (d) Said Act further discriminates against interstate transportation by motor vehicle, in that, while such local operators generally enjoy a monopoly on the route they traverse, it also provides for an exemption to local operators from all state taxation, except three per cent. of its receipts from passenger transportation, but grants no such exemption to operators engaged in interstate commerce. (e) Part II. of said Act is also in conflict with the Fourteenth Amendment of the Constitution of the United States, in that it provides for no hearings before the Tax Commissioner, or any other body or board, by the parties affected thereby, and no appeal from an unjust, arbitrary, oppressive or inequitable exercise of power or authority by said Tax Commissioner, or said Commissioner of Motor Vehicles, and thereby deprives Complainant of its property without due process of law.

14. Furthermore, said tax is exorbitant, unreasonable [fol. 7] and confiscatory, in that, when added to the other taxes and fees, it imposes a burden upon Complainant out of all proportion to taxes levied upon property and business in general, and subtracts for tax purposes such a large percentage of the Complainant's revenue as to amount to confiscation.

That both under the Commerce Clause and the Fourteenth Amendment Complainant is entitled to immunity from this tax, of which immunity Defendants are seeking to deprive it.

15. Complainant further alleges that as against such unjust, arbitrary, oppressive and inequitable exercise of power or authority, it has no adequate remedy at law, in that, if its registration is suspended, its employees and drivers will be subject to arrest and prosecution under the provisions of the Motor Vehicle Law and Police Laws of the State of Connecticut, and its business disrupted and destroyed, as it will be impossible for it to obtain drivers and employees to risk a continued threat of arrest and prosecution, and it will thereby be deprived of its property without due process of law. On information and belief that it is the practice in cases where the registration of motor vehicles does not comply with the Motor Vehicle Law and Regulations adopted by the Defendant Stoeckel as Commissioner of Motor Vehicles, to report the matter to Defendant Hurley as Superintendent of State Police for arrest and prosecution, and through this means Defendants intend to compel and coerce Complainant to make payment of this tax. That if its registration is suspended, it and its employees will be subject to a multiplicity of suits and prosecutions, by reason thereof, and it will be compelled to discontinue its service, and the goodwill of its patrons, resident both within and without the State of Connecticut, would be lost and destroyed, and Complainant forced to [fol. 8] discontinue business, for all of which irreparable injury it likewise has no adequate remedy at law.

16. Complainant further alleges that, outside of and beyond this mileage tax, it contributes to the maintenance of the highways of Connecticut in the same manner and to the same extent as other person or corporations contribute thereto, by the payment of all property and excise taxes properly assessed against it by the payment of the registration fees on thirteen (13) of its motor vehicles used in interstate commerce, and an enhanced price for gasoline purchased for their use in Connecticut, by reason of a tax of two cents per gallon levied by the State of Connecticut, both of which latter items, subject to the expenses of administration, are applied directly to highway construction and maintenance.

17. Furthermore, the State of Connecticut has accepted through its Highway Department aid from the Federal

Government in the construction of its highways, the purpose of which aid is that state highways shall be open to interstate commerce.

Wherefore complainant prays:

1. That writs of subpœna issue out of and under the seal of this Court, directed to the several Defendants, commanding each of them to appear herein and answer, but not under oath (oath being expressly waived) the allegations contained in the foregoing Bill of Complaint, and abide by and perform such orders and decrees as the Court may adjudge in the premises.

2. That Chapter 254 of the Laws of 1925, known as "An Act Providing An Excise On the Use of Public Highways by Public Service Motor Busses," so far as it provides in Part II thereof, to impose a tax of one cent a mile upon [fol. 9] the mileage of motor vehicles engaged in interstate transportation of passengers for hire, be declared to be void, and in conflict with the Commerce Clause, Section 8, Article I, of the United States Constitution, and void as in excess of the power of the Legislature of the State of Connecticut, and in conflict with the Fourteenth amendment of the Constitution of the United States, as depriving Complainant of its property without due process of law, by reason of the matters alleged in the Bill of Complaint herein.

3. That the Defendants Blodgett, Rogers, Stoeckel, Salmon and Hurley, and each and every of their subordinates and employees, be restrained and enjoined from enforcing or attempting to enforce the provisions of the aforesaid Act, from revoking or suspending the registration of Complaintiff's motor vehicles, and from arresting and prosecuting Complainant's agents and employees, or causing any suit or prosecution to enforce any of the provisions of Part II of the aforesaid statute, or otherwise interfering with the Complaint in the conduct of its interstate business.

4. That the paper writing purporting to be an acceptance of the terms of Part II of the above mentioned Act be declared null and void, and of no effect, as in conflict with the Commerce Clause and the Fourteenth Amendment, as seek-

ing to impose upon this Complainant an unconstitutional condition, and the waiver of rights secured to it under the Constitution of the United States, in consideration of the issuance of registration of Complainant's motor vehicles operating in interstate commerce through Connecticut, and the assumption of the burden of an unconstitutional tax.

5. That during the pendency of this suit, an interlocutory injunction issue containing the same restraints, and that the Complainant has such other and further relief as to [fol. 10] equity appertains, together with the costs of this action.

6. That a proper Court be constituted in conformity to Section 266 of the Judicial Code of the United States, for the purpose of adjudicating the rights hereinbefore asserted in this Complaint.

7. That the Defendants be summoned to show cause at the earliest practicable day, on which said Court can be convened, why the interlocutory injunction as prayed for herein should not issue, as provided in Section 266 of the Judicial Code of the United States.

Interstate Busses Corporation, by Louis Consiglio, Treasurer; Edward H. Kelly, Solicitor for the Complainant, 7r Pearl Street, Hartford, Conn.

[fol. 11] *Duly sworn to by Louis Consiglio. Jurat omitted in printing.*

[fol. 12] EXHIBIT "A" TO BILL OF COMPLAINT

House Bill 1047, Chapter 254

An Act Providing an Excise on the Use of Public Highways by Public Service Motor Busses

Be it enacted by the Senate and House of Representatives in General Assembly Convened:

Part I

Term "Company" Defined

Section 1. The word "company" as used in this act shall be construed to mean any individual who, or copartnership,

corporation or association of individuals, which shall engage in the business of carrying passengers for hire over the highways of this state in motor busses between fixed termini both of which are situated in this state.

To Pay Excise Fee for Use of Highways. Amount, How Determined

Sec. 2. Each company shall pay an excise fee for the use of the highways of the state upon its entire gross receipts from the conveyances operated by it within this state. For the purpose of the determination of the amount to be paid, each such company shall, on or before the thirty-first day of March in each year, return to the tax commissioner, on forms to be prescribed by him, a statement under oath of the owner of such business if the same is individually owned, and if otherwise owned, then such statement shall be returned by the treasurer of such company or the custodian of its funds or its duly authorized agent or officer, specifying: Its address and location within this state; the name and location within this state of the person upon whom service of process may be had against such company; the total amount of gross receipts from all sources from the lines or routes operated in the taxing period ended December thirty-first of the year preceding or for such lesser time than one year as such operation shall have continued; the amount of tax assessed and paid by it on real estate standing in its name during the last completed taxing period next preceding the date of such report; and such other information as may be required by the tax commissioner to accurately compute the amount of the excise imposed by the provisions of this act.

Amount of Excise

Sec. 3. The amount of the excise to be annually paid shall equal three per centum of the gross receipts of such company from such operations for the period covered by each such report less the amount of taxes paid in any town in this state on the real and tangible personal estate of such company, which estate was assessed in its name on the tax date next but one preceding the filing of its return

and which was used in whole or in part in the conduct of such business, but, if such real or tangible personal estate was in part used in such business by the company, only an equitable portion of such tax, as determined by the tax commissioner, based on the relative value of the space so used, shall be so deducted.

[fol. 13] Board of Equalization to Determine Amount Annually

Sec. 4. The board of equalization shall annually determine the amount of such gross receipts of every such company for the year ended December thirty-first next preceding or for such lesser time as such company may have carried on such business. The tax commissioner shall notify each company of the amount of such deduction and the amount of its excise fee on or before June tenth following. Any taxpayer, claiming to be aggrieved by the action of such board with respect to the amount of any deduction allowed or with respect to the amount of the excise shall, within ten days from the date of such notice, give notice to said board in writing of such grievance. Said board shall designate the time when and place where such aggrieved company may be heard thereon. After such hearing said board shall finally determine the amount of such gross earnings, deductions and excise and shall give final notice thereof, in writing to the company.

Excise When Payable

Sec. 5. The board of equalization, within the first ten days of July in each year, shall prepare a list showing the name and address of each such company and the amount of gross earnings and separately the amount of allowable deductions as fixed pursuant to the provisions of this act, and shall enter the amount of the excise opposite the name of each such company and shall certify to the correctness of such list and deliver the same to the treasurer of the state. Failure to receive any notice required to be given by the provisions of Part I of this act shall not be construed to relieve the company from payment of the excise hereby imposed. The amount of such excise less the amount of lawful deductions shall be payable to the

treasurer on the fifteenth day of July next succeeding the date of the mailing of final notice thereof. All amounts which shall become due to the state by authority of the provisions of Part I of this act shall be a lien on all property or interest therein of the company until the same shall be paid, and each such lien shall take precedence over all other encumbrances except taxes payable on real estate to the town wherein the same is situated. If the amount of any such excise shall not be paid on or before the twenty-fifty day of July next following the date of final notice thereof, the same shall bear interest from the fifteenth day of said month at the rate of seven per centum per annum until paid if payment shall be made before the commencement of legal proceedings for the recovery of the same, but at the rate of ten per centum per annum if payment shall be made after the commencement of such proceedings. The proceeds derived from the administration of Part I hereof shall be expended by the highway commissioner for the maintenance and reconstruction of trunk line highways without specific appropriation thereof by the general assembly.

Excise to be in Lieu of Taxes

Sec. 6. The excise imposed by the provisions of Part I of this act shall be in lieu of all other taxes upon the intangible personal property exclusively owned, leased or used by such company in the conduct of such business, and of its rights, franchises, funded and floating debt, money and credits, accounts and bills receivable and shares of stock of any such company organized in this state, but the provisions hereof shall not be construed as exempting any company from complying with the provisions of the law relating to the fees payable to the motor vehicle commissioner for the licensing or registration of motor vehicles, and all busses employed in the business of any such company shall be subject to the statutes of this state pertaining [fol. 14] to the operation, control and use of such vehicles upon the public highways.

Powers of the Board of Equalization

Sec. 7. The board of equalization may ex-cise all the powers conferred upon it in the administration of the

provisions of this act which are conferred upon said board by the provisions of section 1387 of the general statutes. Any person or company failing to make returns as required by the provisions of Part I hereof shall be subject to the provisions of section 1388 of the general statutes. Any money due to the state by authority of the provisions of Part I of this act may be collected in the manner provided in section 1389 of the general statutes. No company subject to the provisions of Part I of this act shall be subject to the provisions of chapter 73 of the general statutes as amended.

Part II

Owners of Interstate Operated Vehicles to File Statement with Commissioner

Sec. 1. The owner of each motor vehicle which is operated over any highway in the state for the purpose of carrying passengers from a point outside the state to another point outside the state, from a point outside the state to a point within the state or from a point within the state to a point outside the state, shall, annually, on or before the thirty-first day of March, file with the tax commissioner, on blanks to be prescribed by him, a sworn statement of the name and address of such owner, the number of miles of highway in the state over which such motor vehicle shall have been operated during the year ending the thirty-first day of the last preceding December and such other information as said commissioner shall require, and shall pay to the treasurer, as an excise on the use of such highway, one cent for each mile so used.

Acceptance of Provisions of Act

Sec. 2. Within thirty days from the passage of this act, the motor vehicle commissioner shall send, by registered mail, postage prepaid, a notice of the provisions of Part II hereof, to the owner of each motor vehicle operating as described in section one of said Part II and registered under the provisions of the general statutes concerning registration of public service motor vehicles. On or before the first day of August, 1925, the owner of each such motor vehicle shall file with the commissioner of motor

vehicles a statement of his acceptance of the provisions of said Part II.

Suspension of License

Sec. 3. The commissioner of motor vehicles shall suspend the registration of any motor vehicle whose owner shall be subject to the provisions of Part II hereof and shall fail to comply therewith, during the period for which such failure shall continue.

Proceeds to be Expended for Construction and Maintenance of Highways

Sec. 4. The proceeds derived from the administration of Part II hereof shall be expended in the manner provided in section five of Part I for the proceeds of said Part I.

Adjudging Portion of Act Invalid not to Affect Validity of Any Other Portion Hereof

Sec. 5. The adjudging of any portion of this act to be invalid shall not affect the validity of any other portion hereof.

Approved June 24, 1925.

[fol. 15] "Exhibit B" to Bill of Complaint

B928

State of Connecticut

Excise Fee on Public Service Motor Busses

Notice of Assessment on List of 1926

Office of the Tax Commissioner, Hartford, Connecticut

July 2, 1926.

To Interstate Busses Corporation, 164 Allyn St., Hartford, Conn.:

An excise fee of $2,255.70 is herewith levied upon your corporation. This fee has been based upon taxable gross

receipts from the operations of Intrastate Public Service Motor Busses during the year 1925; or upon miles of Connecticut highway over which Interstate Busses were operated during 1925. If your company was entitled to a deduction for property taxes paid locally, such deduction has been made in arriving at the foregoing amount.

This notice is given pursuant to the provisions of Chapter 254, Public Acts of 1925.

This fee is payable to the State Treasurer, Hartford, on or before July 15, 1926.

Board of Equalization.

GPM.

Received payment.
Forward this bill to the State Treasurer with payment.

(On reverse side:) The tax is payable the fifteenth day of July, and if not paid on or before the twenty-fifth day of July, interest shall be charged from the fifteenth day of said July at the rate of seven per centum per annum until paid if payment shall be made before commencement of legal proceedings for recovery of such tax, or at the rate of ten percentum per annum if payment shall be made after commencement of such proceedings.

[fol. 16] In United States District Court

[Title omitted]

Answer

Now come the defendants, and for answer to the bill of complaint, say as follows, viz:

1. Paragraphs 1, 2, 3, 5, 6, 8, 9, 10, 12 and 17, of the bill of complaint, are admitted.

2. Paragraph 13 of the complaint is denied, except that defendants admit that the complainant is engaged in interstate commerce; that the Act in question authorizes suspension of complainant's motor vehicle registration for non-compliance, and that arrest and prosecution for operation of unregistered motor vehicles are then possible; that

the mileage tax is sought to be enforced only against owners of motor vehicles engaged in interstate commerce; that intrastate operators are exempt from certain taxes, namely, taxes on their intangible personal property exclusively owned, leased, or used in the conduct of such local business, their rights, franchises, funded and floating debts, money and credits, accounts and bills receivable, and shares of stock of any corporation-owner, organized in Connecticut; that local operators are by Part I of said Act subject to an annual tax of three (3) per cent upon the gross receipts of their operation; and that no hearings or appeals are provided upon or from the actions of the Tax Commissioner or Commissioner of Motor Vehicles.

3. Paragraph 14 of the bill of complaint is denied.

4. Paragraph 4 of the bill of complaint is admitted, except that the defendants deny that the law or statute, therein [fol. 17] referred to, is a "pretended" law or statute, and allege that the same is valid, in all respects.

5. Paragraph 7 of the bill of complaint is admitted, except that the defendants deny the allegations that a new regulation was put into effect, on or about August 1, 1925, for the purpose of enforcing Part II of Chapter 254, Public Acts of 1925, and allege that such new regulation was put into effect on April 14, 1925, and for a different purpose.

6. Paragraph 11 of the bill of complaint is admitted, except that the defendants deny that the tax is illegal or unconstitutional, and that the purpose was or is to exact an illegal or unconstitutional tax, and allege that the tax is valid in all respects.

7. Paragraph 15 of the bill of complaint is denied, except that defendants admit that, in case of suspended registration, operators of motor vehicles are subject to arrest and prosecution, and that reports of violations of the Motor Vehicle Law and Regulations are made to the State Police for action.

8. Defendants admit that the complainant pays property taxes on three (3) motor busses to the City of Hartford, Conn., and registration fees for such number of its busses as operate in Connecticut, and deny that the com-

plainant is subject to, liable for, or pays the so-called gasoline-sale tax, referred to in paragraph 16 of the bill of complaint.

Having thus made full answer to the bill of complaint, the defendants pray that said bill be dismissed, and for judgment for their costs in this behalf incurred.

William H. Blodgett, Tax Commissioner of the State of Connecticut. Ernest E. Rogers, Treasurer of said State. Frederick M. Salmon, Comptroller of [fol. 18] said State. Robbins B. Stoeckel, Commissioner of Motor Vehicles for said State. Robert T. Hurley, Superintendent of Police for said State. Frank E. Healy, Hartford, Conn., Attorney General for the State of Conn., and Stoddard, Goodhart, Wetzler & Persky, 185 Church Street, New Haven, Conn., Solicitors for said Defendants.

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREED STATEMENT OF FACTS

On the application for a Temporary Injunction, pursuant to the provisions of Section 266 of the Judicial Code, the following facts are agreed:

1. Interstate Busses Corporation is a Connecticut corporation, engaged in the business of transporting passengers for hire by motor vehicle.

2. In the State of Connecticut it operates an interstate line of busses from Hartford to the state line at Longmeadow, Massachusetts, on a route extending to Springfield and Worcester. Another line is operated from Hart- [fol. 20] ford to the state line at Killingly, Connecticut, on an interstate route extending to Providence, Rhode Island. It also operates through the Towns of Woodstock, and Putnam, in Connecticut, an interstate line extending from Springfield, Massachusetts, to Providence, Rhode Island.

3. All passengers transported by it through Connecticut are taken up within Connecticut and discharged without, or, are taken up without and are discharged within. The Plaintiff transports no passengers from one point to another, both within the State of Connecticut.

4. It began such interstate operation about November, 1924, the first line operated by it being between Hartford and Providence.

5. For the six months' period beginning July 1st, 1925, and ending December 31, 1925, it operated its motor vehicles over the highways of Connecticut, a total of 120,336 miles. No records were kept of mileage operated during the first six months of 1925, prior to the effective date of Chapter 254 of the Laws of 1925.

6. The Defendants Blodgett, Rogers and Salmon are respectively the Tax Commissioner, State Treasurer and Comptroller of the State of Connecticut, and as such ex officio constitute the State Board of Equalization, in accordance with the provisions of Chapter 1245 of the General Statutes of Connecticut.

7. The Defendant Robbins B. Stoeckel is the Commissioner of Motor Vehicles in the State of Connecticut; and the Defendant Robert T. Hurley is Superintendent of State Police of said State.

[fol. 21] 8. Under authority of Part II of Chapter 254 of the Public Acts of Connecticut, Defendants propose, and threaten to enforce, payment of a tax or excise of one cent a mile for the total number of miles of highway in Connecticut, over which Plaintiff's motor vehicles had been operated during the year 1925.

9. About April 14, 1925, Defendant Stoeckel, as Commissioner of Motor Vehicles, promulgated a new regulation requiring a special registration of motor vehicles operated for the transportation of passengers in interstate commerce, which special registration and markers distinguished such motor vehicles from other similar motor vehicles operated entirely within Connecticut.

10. On July 10, 1925, he demanded of all persons and corporations engaged in the transportation of passengers by motor vehicle in interstate commerce over the highways of Connecticut (including Complainant) that they obtain and pay the fees prescribed for such special registration and markers, and an acceptance of Part II of Chapter 254 of the Laws of 1925, which fees are the same as, and not in addition to, the fees charged for registration and markers to the Public Service Motor Busses operating in intrastate commerce.

11. On or about August 1, 1925, the Plaintiff, through its agent and manager, made application for such special registration and markers in accordance with this demand. Plaintiff's application was accepted, subject, however, to its acceptance in writing of the provisions of Part II of Chapter 254 of the Public Acts of 1925; and Plaintiff's agent was informed by officials in charge of the matter in the office of the Commissioner of Motor Vehicles that, without such written acceptance, registration of, and markers, for Plaintiff's motor vehicles, would be refused.

[fol. 22] 12. Plaintiff's agent then and there signed said acceptance, without referring the matter to the Board of Directors or other of Complainant's officials, and without authority from the latter, and assuming that this acceptance was a routine matter necessary for the obtaining of registration and markers, and that the question of the validity of this tax remained for further determination.

13. Defendant Blodgett, with a view to enforcement of said tax, has demanded of Complainant a statement of the entire mileage of its motor vehicles in Connecticut for the year ending December 31, 1925.

14. Complainant has filed such statement, under protest, correctly setting forth the mileage for the six (6) months' period beginning July 1, 1925, and a statement of mileage subject to corrections for the six (6) months' period beginning January 1, 1925, on the basis of these returns.

15. The Defendants Blodgett, Rogers and Salmon, assuming to act in their capacity as a Board of Equalization, have adjusted the tax claimed to be due by this Complain-

ant on the basis of these returns, and have demanded payment of the sum of $2,255.70, by virtue of authority claimed invested in them by the provisions of Chapter 254 of the Laws of 1925, Part II thereof.

16. Plaintiff's motor vehicles have operated over the Connecticut highways in interstate commerce for the six (6) months' period ending July 1, 1926, over 120,000 miles.

17. There are 36 registered operators in interstate commerce, 20 of which are now operating and engaged in transporting passengers for hire from points within to points without, or the reverse, or whose transportation both begins and ends in other states, but, for some portion thereof, is over Connecticut highways.

[fol. 23] 18. Under the provisions of Part II of Chapter 254 of the Laws of 1925, the Defendant Stoeckel is required, in the performance of his duty as Commissioner of Motor Vehicles, to suspend the registration of any motor vehicle whose owner shall fail to comply with the provisions of said Part II. And it is the intention of said defendant (unless restrained therefrom) to revoke registration of Complainant's vehicles, and all other interstate operators failing to comply with said provisions.

19. The practice in cases where the registration of motor vehicles does not comply with the motor vehicle law or regulations adopted by the Commissioner of Motor Vehicles is to report the matter to the Defendant Hurley as Superintendent of State Police for arrest and prosecution.

20. This practice is authorized under the provisions of Section 53 of the Motor Vehicle Law of Connecticut, being Chapter 400 of the Laws of 1921, which authorizes the Commissioner of Motor Vehicles to call upon the State Police Department for aid in enforcing the provisions of the motor vehicle law, and requires the State Police, upon such requests, to make arrests in all cases of violations of the provisions of the act which they may witness.

21. The operation upon the highways of Connecticut of a motor vehicle, the registration of which has been suspended or revoked, constitutes a violation of Chapter 257 of the Public Acts of 1923, which subjects the operator thereof to

a fine of not more than $200.00 or imprisonment of not more than ninety (90) days or both. The Defendants [fol. 24] Stoeckel and Hurley intend to cause the arrests of Complanant's drivers found operating vehicles after revocation of registration.

22. The Plaintiff pays property taxes to the City of Hartford on three motor busses, that being the average number located and used within the State. It is also subject to a state tax of two per cent on the amount of its income reported for taxation under the Federal Income Tax Law, as required of miscellaneous corporations under Chapter 73 of General Statutes, and pays to the State of Connecticut registration fees upon thirteen (13) motor vehicles used in interstate commerce, and an enhanced price on gasoline, by reason of a tax imposed thereon by the State of Connecticut. Such gasoline tax, however, is not imposed upon the users thereof, but is imposed solely on dealers in gasoline, and the Plaintiff is not subject to, or liable for, nor does it pay, the so-called gasoline tax, except as the price is enhanced to the extent thereof. Such gasoline tax is applied directly to highway construction and maintenance, under the authority of the Highway Commissioner of Con necticut, pursuant to the provisions of Section 6 of the Public Acts of 1925, and said registration fees are imposed as license fees applicable to the administration of the motor vehicle law, and for compensation for the privilege of using the highways, and to reimburse the state in whole or in part for injury done such highways, under provisions of Chapter 400 of the Laws of 1921, Section 22 Sub-Division (u).

23. Persons employed in the transportation of passen- [fol. 25] gers by motor vehicle from one point to another, both within the state, are exempt from taxes on their intangible personal property exclusively owned, leased or used in the conduct of such local business; and also upon their rights, franchises, money and credit, accounts, and bills receivable, and their shares of stock, where such owner is a corporation organized in this State.

24. Such local operators are also entitled to a credit in the amount of local taxes paid upon real and tangible per-

sonal property wholly or partly used in the conduct of their business, in accordance with the provisions of Section 3 of said Part I as follows:

"The amount of the excise to be annually paid shall equal three per centum of the gross receipts of such company from such operations for the period covered by each such report less the amount of taxes paid in any town in this state on the real and tangible personal estate of such company, which estate was assessed in its name on the tax date next but one preceding the filing of its return and which was based in whole or in part in the conduct of such business, but if such real or tangible personal estate was in part used in such business by the company, only an equitable portion of such tax, as determined by the tax commissioner, based on the relative value of the space so used, shall be so deducted."

25. The State of Connecticut has been granted allotments by the Federal Government in aid of the construction and maintenance of highways in Connecticut in the sum of $4,333,681.00, besides the use of various other equipment suitable for highway construction and maintenance supplied to it, being surplus equipment not required for military purposes for the United States.

26. For the construction, re-construction, improvement, maintenance and repairs of highways in the State of Connecticut, the State has received from all sources the fol-
[fol. 26] lowing sums of money, viz:

Legislative Appropriations (since 1895)	$30,541,000 00
Motor Vehicle Dept. (since 1908) Fees and Fines	34,860,881 88
Gasoline Sale Tax (since 1923)	4,497,460 57
Federal Aid Allotted, $4,333,681.00. Federal Aid Actually Received	2,299,564 74
	$72,198,907 19

The State has actually expended on such work (not including work in progress and work projected, and to which the State has actually committed itself) the sum of $72,966,-289.12.

There is an excess of disbursements over receipts, as follows, viz:

Disbursements	$72,966,289.12
Receipts	72,198,907.19
Deficit	$767,381.93

November 8, 1926.

Edward H. Kelly, Solicitor and Counsel for Complainant, Interstate Busses Corporation, 75 Pearl Street, Hartford, Conn. Frank E. Healy and Stoddard, Goodhart, Wetzler & Persky, Solicitors and Counsel for Defendants Blodgett, Rogers, Salmon, Stoeckel, and Hurley, Chamber of Commerce Building, New Haven, Connecticut.

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before Martin T. Manton, Circuit Judge; Edwin S. Thomas and Marcus B. Campbell, District Judges, Holding Court Pursuant to #266 of the Judicial Code (Comp. Stat., #1243

Statement of Evidence.

APPEARANCES OF COUNSEL

Edward H. Kelly, Esq., for the Plaintiff.

E. F. Wetzler, Esq., of Stoddard, Goodhart, Wetzler & Persky, for the Defendant.

Mr. CLINTON G. NICHOLS, having been duly sworn, testified as follows:

Mr. Pickett: Your full name?

A. Clinton G. Nichols.

Mr. Pickett: Where do you reside?

A. West, Hartford, Connecticut.

Direct examination by Mr. Kelly:

Q. What is your business or occupation, Mr. Nichols?

A. I am in the state highway department of Connecticut.

Q. What is your official connection with the department?

[fol. 28] A. Executive Deputy Commissioner.

Q. Have you, Mr. Nichols, made an examination of the records of the State Highway Department for the purpose of determining the sources of revenue for the department's use in the construction and maintenance of highways?

A. I have, sir.

Q. For what years, Mr. Nichols?

A. For the three years beginning July 1st, 1923, and ending June 30th, 1926.

Q. Now for the last two of those years, that is, June, 1924, to June, 1925, and the year June, 1925, to June, 1926, will you tell us what the sources of revenue have been—first, the sources, and then the amount from each source?

A. This is for the two years, I understand. For automobile registrations, that is, the fees, $11,260,784.60; for auto fines, $432,015.39; a total of motor vehicle fees and fines, of $11,692,799.99.

Q. Now Mr. Nichols, will you give us the other sources?

A. Automobile gas receipts—total gas receipts.

Q. Gasoline receipts?

A. Gasoline. That is, taxes and various items that are not divided when they come to us. This is the total amount. For the two years, $3,534,945.13.

[fol. 29] Q. That is the proceeds of the administration of the gasoline tax law, is it?

A. That latter amount?

Q. Yes.

A. Yes, sir.

Judge Manton: What is that item?

The Witness: That is the proceeds of the operation of the gas tax law, 2 cents per gallon at the present time.

Judge Manton: And that is collected under the administration of the Motor Vehicle Department, is it?

The Witness: Yes, sir.

Judge Manton: What does that total, that the department received from the Motor Vehicle Department?

The Witness: For automobile registration and gasoline?
Judge Manton: Yes.
The Witness: For the two years, $15,227,745.12.

Mr. Kelly:

Q. For those same years, Mr. Nichols, will you give us the other sources of revenue that the department has?

A. From the federal government, for payments on federal aid roads, $1,083,451.72.

Q. And that is the actual receipts that the department has had, is it?

A. The actual cash, yes.

[fol. 30] Q. There are appropriations beyobd that that you have not yet received?

A. Yes, sir.

Q. The other sources of revenue?

A. From the towns in the state, $316,005.90.

Q. Any others?

A. Sundries, $2,236,382.53; direct appropriations from the legislature, $3,166,500.00.

Q. That is the total of all your receipts, is it, Mr. Nichols?

A. Yes, sir.

Q. Will you explain the two items that you enumerated under the head of "Towns" and "Sundries,"—is that directly a revenue of the department?

A. They are not, because it is money we have expended and which we collect afterward.

Q. So that where it has gone out or has been received, another dollar has gone out from the department, and it doesn't mean any revenue?

A. No, sir.

Q. It is simply a bookkeeping receipt?

A. We have no business for profit, Mr. Kelly. We spend it out on these contracts, and then send a bill for each town's proportion of the cost.

Q. The amounts set forth are not revenue in the sense that the appropriations from the legislature are. You [fol. 31] have given value for it?

A. We have.

Q. When an appropriation is made you get no value for it?

A. We use it in the construction and maintenance of highways.

Q. You give no value for it when you get it?

A. No, sir.

Q. That is part of the receipts you get from the Motor Vehicle Department. You get it to spend in the maintenance and construction of roads?

A. Absolutely, yes, sir.

Q. Until you spend it you have given no value to anybody for it?

A. That is true.

Q. In that respect it differs from the items of "Towns" and "Sundries?"

A. Yes, sir, because that money is not received until bills are submitted and the work has been done, of course.

Q. Will you illustrate what a sundry would be—give us a sample, or an item?

A. We charge our department for equipment at a certain rate per day. That money is collected through the comptroller's office, the bills are paid, and the net earnings, we call them, are returned to the department. We have a material account.

[fol. 32] Q. So that when you have a receipt called sundries or miscellaneous of any amount, that goes into that item, it is because you have done some work or had your equipment do some work that it covers?

A. With the exception of material. We buy our material in large quantities and save the discount and get special prices, and when we use that in a certain town it is charged against that particular town, and it is refunded to the same account from which it was originally paid.

Q. That is not a source of revenue?

A. No, sir.

Q. The sources of revenue, if I understand you, total some $15,000,000?

A. A trifle over $15,000,000.

Q. Your legislative appropriations total $3,166,500.00, and your federal aid $1,083,451.72; so that those total—have you those three items totaled?

A. I have not, no, sir.

Q. Would you mind totaling them, Mr. Nichols?

A. You want the direct appropriations by the legislature in here?

Q. Yes. I want you to total all of the revenue of the department; that is, that is new revenue and is not a bookkeeping matter.

A. $19,477,696.84.

[fol. 33] Q. That is the total revenue for two years?

A. That is the total for two years, yes, sir.

Q. And of that the automobile department contributes $15,227,781.12.

A. I have the figures $15,227.745.12.

Q. A matter of about 80 per cent, isn't it?

A. Practically. Not quite 80 per cent.

Mr. Kelly: That is all, Mr. Nichols.

Judge Manton: Any questions?

Cross-examination by Mr. Wetzler:

Q. Mr. Nichols, as I understand it, then, the sources of revenue from the department are separated from the general appropriations furnished you by the legislature?

A. Yes, sir.

Q. And these specific sources of revenue amount to $19,000,000, whereas the direct legislative appropriations are only about $3,000,000?

A. That is correct for the two years.

Q. That total of direct legislative appropriations represents a very much smaller sum than had been received from the legislature in earlier years?

A. That is true. For 1925 and 1927 the appropriation was much smaller.

Mr. Wetzler: That is all.

[fol. 34] Mr. Alfred Demaris, having been duly sworn, testified as follows:

Mr. Pickett: Your full name?

A. Alfred Demaris.

Mr. Pickett: Where do you live?

A. #146 Broad street, Pawtucket, Rhode Island.

Direct examination by Mr. Kelly:

Q. What is your business?

A. Manager of the Interstate Busses Corporation.

Q. That is the corporation, the plaintiff in this case here?

A. Yes, sir.

Q. What are your duties, Mr. Demaris, as manager?

A. To supervise all the operations of the company.

Q. Do you attend to the procuring of registration of the motor vehicles of the plaintiff?

A. I do that personally, yes, sir.

Q. In what states are your motor vehicles registered?

A. Connecticut, Rhode Island and Massachusetts.

Q. How many have you registered in Connecticut?

A. Thirteen.

Q. That was for the year 1926?

A. Yes, sir.

Q. At what cost has that been to the plaintiff, Mr. Demaris?

A. The cost averaged per bus——

[fol. 35] Mr. Wetzler: *Mr. Wetzler:* We object to that as immaterial.

Judge Manton: Why is that material, Mr. Kelly?

Mr. Kelly: If your Honor please, it is material, as I view it, in showing the contribution of this plaintiff to the maintenance of the Connecticut highways.

Judge Manton: What difference does that make?

Mr. Kelly: It seems to me it makes this difference——

Judge Manton: This, I take it, is the license fee that is paid by the Interstate Busses Corporation?

Mr. Kelly: Yes. It also makes up this 80 per cent.

Judge Manton: And in that way contributes to the upkeep of the highway. Aren't you merely attacking the wisdom of the legislature's action in passing this legislation?

Mr. Kelly: No, I don't think so. We are showing discrimination against the interstate operator, by showing that without this tax of one cent a mile the interstate operator already contributes to the maintenance of the highways, as the other operators do, and that when the State of Connecticut imposes the additional burden of a cent a mile on him, it is discriminating against him.

Judge Manton: Give us the total of the company's fees.

The Witness: $1,302. I think I have the canceled checks.

[fol. 36] Judge Manton: Did you at that time, when you paid these license fees, operate both intrastate and interstate?

The Witness: Interstate only, sir.

Judge Manton: Did you carry passengers from points in Connecticut to points in Connecticut?

The Witness: We did not. We applied to do it, but they would not give us permission.

Mr. Kelly:

Q. Will you state the figures furnished, between which the cost fluctuates—the highest and lowest cost of the vehicles that you operate?

Mr. Wetzler: You are asking him to state the lowest registration fee, and the highest.

Mr. Kelly: He has given us the total cost as $1,302.

Judge Manton: The objection is overruled.

The Witness: The highest registration that we paid on one bus is $134; that is, on the 27 passenger bus—27 passengers with the driver.

Judge Manton: That is regulated by statute?

The Witness: That is the registration fee for taxis or buses. The lowest that we have paid for one year on any coach is $78.50.

Mr. Kelly: That is determined by a formula which is prescribed by a statute, depending on horse power and piston displacement?

A. Yes.

Q. Now Mr. Demaris, do you also pay registration fees to Massachusetts?

[fol. 37] A. Yes, sir.

Judge Manton: What difference does that make?

Mr. Kelly: It bears on this question in this way——

Judge Manton: What he contributes to some other state is not important, is it?

Mr. Kelly: As showing the use that he makes of the highway, in proportion to what he contributes to their maintenance, I think it is important, for this reason: This operator of the same vehicle pays registration in three states,

and the local operator pays registration only in Connecticut. Necessarily, the local operator operates entirely within Connecticut, and whereas his mileage on the Connecticut highways is his total mileage, our mileage is only from one half to one third our total mileage.

Judge Manton: The Connecticut statute makes you pay per mile—you, like everybody else, per mile. It doesn't make any difference whether you go far or near in the State of Connecticut.

Mr. Kelly: Your Honor is confusing the registration fee with the mileage tax.

Judge Manton: I am talking about the registration you are attacking.

Mr. Kelly: Inasmuch as the automobiles contribute 80 per cent. of the maintenance and construction of the Connecticut highways, of which ours contribute as we show, [fol. 38] out of proportion to what the average automobile contributes, and inasmuch as it is admitted by this bill that we contribute to the maintenance of the Connecticut highways in the same manner that anyone else does, and in the same amount, it strikes me it is material as showing the cost to us of the use we do make.

Judge Manton: I know it may be highpriced and out of proportion, but that is not the test. The test is first of all——

Judge Campbell: You contend you pay a registration fee, and then one cent a mile in addition to that in Connecticut?

Mr. Kelly: Yes.

Judge Campbell: That is interestate?

Mr. Kelly: Yes, sir.

Judge Campbell: You pay first the registration and then pay a cent a mile too?

Mr. Kelly: Yes.

Judge Campbell to witness: Is your registration fee the same registration fee that is paid by Connecticut Buses?

A. Yes.

Q. Do they pay any addition?

A. You mean what tax do they pay?

Q. Yes, we are talking about taxes?

A. They pay in addition to that 3% of their gross re- [fol. 39] ceipts.

Judge Manton: The sole question before us is whether or not the legislature was within its powers of regulation when it fixed a cent a mile for interstate busses, and fixed the other form of taxation for intrastate, both having the same registration.

Mr. Kelly: That is true, and to determine the question you have to consider the present tax imposed on both of these other classes of operators. You cannot make a determination of the question, it seems to me, until you have considered it. That is why we are introducing this evidence, to show what the present burden is, and to show that at the present time both are sustaining an equal burden, and that when you add a cent a mile you are putting an additional burden on the interstate operator.

Judge Manton: The question is what he does in the other states?

Mr. Kelly: Yes.

Judge Manton: That is the question?

Mr. Kelly: Yes.

Judge Manton: Then I think I will exclude that. That is objected to?

Mr. Wetzler: Yes, your Honor.

(Objection noted.)

Q. Mr. Demaris, you do pay a registration fee in the other states, do you?

A. Yes, sir.

[fol. 40] Mr. Kelly: I wish at this time, for the purpose of further examination of Mr. Demaris, to offer in evidence a statement from the Department of Motor Vehicles, certified under the hand of the Commissioner of Motor Vehicles, showing a number of items, but the ones on which I wish to examine the witness particularly is the number of cars and the amount received from the registration on cars operated over the Connecticut highways. The purpose is to show what proportion of the registration fee of a motor vehicle is used in the administration of the motor vehicle act, and then to show the balance which Mr. Nichols has testified goes to the highway department.

Judge Manton: I don't see the importance of how they distribute the taxation after they get it. What argument

do you make from that? You are trying to show the proportion which goes to the upkeep of the highways.

Mr. Kelly: The purpose is to show that we contribute to the upkeep already.

Judge Manton: You mean the license fee?

Mr. Kelly: And by property taxes.

Judge Manton: Connecticut says you must pay the license fee, and you must also pay a cent a mile for interstate buses, and as to the intrastate buses, you must pay three per cent of the gross receipts. That is Connecticut's way of doing it. I don't see how you can attack that. What [fol. 41] you are arguing for now is something that the legislature might take into consideration at the time of passing the act.

Mr. Kelly: I contend that the Court can take it into consideration here. If a burden is imposed on interstate operators additional to the burdens imposed on other operators and other users of the highway that we are entitled to use, what the burden of each is would show where the additional burden is placed on the interstate operator.

Judge Manton: We will let you prove it, and we can draw the inferences later.

Mr. Wetzler: Your Honors have indicated a ruling, and for the sake of the record, I would like to have the ruling.

Judge Manton: The objection is overruled.

(Statement of receipts and other items from the Commissioner of Motor Vehicles was marked "Exhibit 1.")

Judge Manton: You just want to put in parts of this?

Mr. Kelly: Yes. The parts I will indicate, your Honor, when I have it. The items that I wish to offer evidence in regard to are, the registration of motor vehicles of all classes, except motorcycles and motorcycle dealers; also except aircraft and experimental aircraft. I also may offer evidence of the receipts from the registration of these [fol. 42] different classes of motor vehicles, and for the convenience of the record I will ask Mr. Demaris——

Judge Manton: Why don't you read them right into the record?

Mr. Kelly: Perhaps that would be more convenient. This is a list of the various registrations from the office of

the Commissioner of Motor Vehicles, of all kinds of vehicle registrations except motorcycles, motorcycle dealers, aircraft and experimental aircraft. In other words, all ordinary automobiles and trucks and commercial cars. The total is $3,539,234.88. Private owners' registrations, $226,247; commercial, $22,055, receipts, $1,075,892.50; dealers, 362, and the receipts are $17,441; repairers, 16, and the receipts are $783.25; public service X O, 2,305, and the receipts, $68,478.25; public service J, 650, and the receipts are $60,022.75; interstate, 91, receipts, $7,759.50; combination, 2,577, receipts, $5,154; hearses, 219, receipts $5,486.25; trailer, 194, receipts $7,352.00; camp trailer, 134, receipts $268.00; tractor, 41, receipts $1,833; temporary registrations, pleasure, 716, and the total is $1,432; temporary registrations, commercial, 134, total $875; temporary registrations, public service, 659, total receipts $1,318.00; fifteen mile limit registrations, 33, and the receipts $66.00.

[fol. 43] Q. Mr. Demaris, have you caused a computation to be made of the average registrations and the costs thereof, from the figures that I have just read?

A. Yes, sir.

Q. What is the average cost of registration?

Mr. Wetzler: I object to that.

Judge Manton: You mean of all kinds?

Mr. Kelly: That includes his own too.

Judge Manton: What is the purpose of this?

Mr. Kelly: The purpose is to show what the average automobile operating over the highways of Connecticut contributes to the maintenance of the highways, in connection with cost of administration, which we will submit with the next question.

Judge Manton: The objection is overruled. An exception may be noted.

A. The average registration fee per car is $18.69.

Q. That is based on the figures of cars and of receipts?

A. By dividing the total receipts by the number of cars.

Q. Have you made some computations of the cost of administration of the motor vehicle law?

A. I have, sir.

Q. What is that computation based on?

Mr. Wetzler: That is objected to as immaterial.

A. We have taken the amount that the legislature has appropriated for two years, which is $979,400, and divided [fol. 44] by the number of cars in the two years.

Q. And what does that give?

A. $1.91, cost to the department.

Q. As against an average that they collect of how much?

A. An average of $18.69 on the total of cars, or an average of $100, taking buses only.

Mr. Wetzler: I move to strike out the answer.

Judge Manton: I don't see, Mr. Kelly, and my associates agree, that it is material, unless you can persuade us.

Mr. Kelly: We have just shown that the motor vehicle and gasoline tax contributes 80 per cent. of the cost of the highway maintenance. We are proceeding now to show that our full share, and some over, of that 80 per cent. is contributed, and that when an additional tax of one cent a mile is imposed on us, we are contributing more. That is the purpose of it, and it seems to me we are entitled to show it.

Judge Manton: I think we will have to exclude it, Mr. Kelly. An exception may be noted.

Mr. Kelly: I want to ask the witness a question now, in view of the Court's statement and opinion on the application for a temporary injunction, that we carry no insurance for the protection of passengers.

Judge Manton: What the Court said was, there is no law requiring you to. I don't know what you might do volun- [fol. 45] tarily. There are certain requirements, and the state has the right to require certain things, whereas the interstate carrier, who is not regulated, may or may not carry insurance.

Mr. Kelly: That is not the law as I understand it, and I want to lay the basis of an argument on that point with this question. The law is that a public service operator of motor vehicles is required to carry insurance, and we could not get our registration without it.

Judge Manton: You mean within the state?

Mr. Kelly: As an interstate operator, carrying only across state lines.

Judge Manton: I will let you offer it.

Q. Mr. Demaris, do you carry insurance on these motor vehicles that you have testified in regard to?

A. Yes, sir.

Q. What is the amount of the insurance that you carry on each of those motor vehicles?

A. The amount is $10,000 to $50,000.

Q. And that covers what?

A. Liability, and $1,000 property damage, and if a person is hurt on our bus and he could collect to the amount of $10,000 from the insurance company, for one person, and a total of $50,000 for the whole coach.

Q. For his accident?

A. For the accident. One person, $10,000; more than [fol. 46] one, or a number of them, $50,000.

Q. What does the law require that you carry, as you understand it?

Judge Manton: You don't want him to tell what the law is.

Q. That insurance costs you how much money?

Judge Manton: What difference does that make?

Mr. Kelly: I will withdraw the question.

Judge Manton: Is there any further proof?

Mr. Kelly: That is all, your Honor.

Judge Manton: You had better offer in evidence the agreed statement of facts. That may be considered in evidence.

(An agreed statement of facts was offered in evidence and marked "Exhibit 2.")

Motion to Dismiss and Order Allowing Same

Mr. Wetzler: We move for a dismissal of the action.

Judge Manton: Do you wish to be heard further?

Mr. Kelly: O yes, on the argument.

Judge Manton: Go right on, then.

(Arguments by counsel.)

Judge Manton: The motion to direct a verdict and dismiss the complaint will be granted. The proof offered this

morning does not change our views as expressed in the opinion and decision handed down at the time the applica-
[fol. 47] tion was made for a preliminary injunction pending the trial of this suit. We adhere to the views there expressed. Motion granted.

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

Bill in equity to restrain the defendants, who are officers of the State of Connecticut, from enforcing Chapter 254 of the Public Acts of 1925 because it is in conflict with #8, Art. 1, of the United States Constitution.

Motion denied.

Edward H. Kelly, Esq., Counsel for Plaintiff. Frank E. Healy, Esq., Attorney General for the State of Connecticut, and Stoddard, Goodhart, Wetzler & Persky, Esqs., Solicitors & Counsel for Defendants. E. T. Wetzler, Esq., of Counsel.

OPINION—January 4, 1927

MANTON, Circuit Judge:

The complainant is a corporation organized under the
[fol. 49] laws of the State of Connecticut with its principal place of business in that state. It is engaged in interstate commerce in the transportation of passengers for hire between Connecticut and cities in Massachusetts and Rhode Island. The defendants are public officers of the State of Connecticut and perform duties pursuant to #1245 of the General Statutes of Connecticut.

In June, 1925, an act was passed by the Connecticut Legislature providing an excise on the use of public highways by public service motor busses. (Chap. 254 of the Public Acts of 1925.) Part II of this Chapter, which is applicable to the plaintiff as an interstate carrier of passengers, imposes a tax or excise of one cent a mile for the total number of miles of highway over which motor vehicles operate in interstate commerce. It provides that

"The owner of each motor vehicle which is operated over any highway in the state for the purpose of carrying passengers from a point outside the state to another point outside the state, from a point outside the state to a point within the state or from a point within the state to a point outside the state, shall annually, on or before the thirty-first day of March, file with the tax commissioner on blanks to be prescribed by him, a sworn statement of the name and address of such owner, the number of miles of highway in the state over which such motor vehicle shall have been operated during the year ending the thirty-first day of the last preceding December and such other information as said commissioner shall require, and shall pay to the treasurer, as an excise on the use of such highway, one cent for each mile so used."

Protection against this enactment is sought through the constitutional provision—#8, Art. 1—which provides that Congress shall have the power to regulate commerce with foreign nations and among the several states, and with Indian tribes. The contention is that this tax imposes an unlawful burden upon interstate commerce and the prayer [fol. 50] of the complaint seeks to enjoin the public officers from enforcing the terms of the statute. There is also a prayer for relief based upon the theory that this legislation is in conflict with the Fourteenth Amendment of the Constitution as depriving the complainant of its property without due process of law. On the argument and in the briefs, this latter contention is not pressed and plaintiff places its sole reliance upon the alleged conflict with #8, Art. 1 of the Federal Constitution. If the law be unconstitutional, the right to maintain this suit as a restraint on enforcement is well recognized.

The legislature of Connecticut in the enactment of its Motor Vehicle laws has enacted a comprehensive scheme of supervision and control by the state in so far as concerns the motor vehicle carriers doing intra-state business and it is conceded that they do not apply to interstate carriers. But, by the enactment here attached, a tax, as an excise, is imposed upon the interstate carrier. By the Connecticut law, the intrastate carrier is subject to the jurisdiction of its Utilities Commission and its rules and regulations an-

nounces routes, fares, speeds, schedules, continuity of service, the convenience and safety of passengers and the public. Such carrier may only engage in business after having obtained a certificate of public convenience and necessity from the Commission specifying the route to be covered and the service to be rendered. Townships, cities and boroughs, touched by such operation, are permitted to be heard. Certificates are subject to amendment and revocation. Fines for violation of the law, regulations and orders [fol. 51] are issued, carriers are required to register their cars, insurance or surety bonds are required, indemnifying against injury to person and property. The interstate carrier is subject only to pay the mileage tax above referred to. He selects his own routes and roads at will. He may travel them as often as he wishes as the calls of his business may require. He fixes his rates of traffic and contributes nothing toward the upkeep of the roads or the building of new ones. He carries no insurance, by regulation of law, for the benefit of those who suffer injury to person or property, and he is not required to report to the public officials in any manner except by the command of the present enactment. If the State is permitted to impose the excise tax referred to, it is in no sense a discrimination against interstate commerce. On the contrary, it is a means of creating equality of the burden of taxation exacted and the burden of road use and damage thereto. It was pointed out in Hendrick v. Maryland, 235 U. S. 610, that the movement of motor vehicles over the highways is abnormally destructive to the ways themselves and that success depends upon good roads, the construction and maintenance of which was extensive and there are in recent years, insistent demands made upon the states for better facilities, especially by the ever increasing number of vehicles using them. In that case, the court said that in view of its many decisions, there could not now be a serious doubt that where a state at its own expense furnished special facilities for the use of those engaged in commerce, interstate as well as domestic, it could exact compensation therefor. The amount of the charges and the method of [fol. 52] collection was held to be primarily for determination by the State and as long as they are reasonable and are fixed according to some uniform, fair and practical

standard, they constitute no burden on interstate commerce. Citing, Transportation Co. v. Parkersburg, 107 U. S. 691; Huse v. Glover, 119 U. S. 543; The Minnesota Rate Cases, 230 U. S. 352. In Kane v. State of New Jersey, 232 U. S. 160, the Supreme Court again stated that

"The power of a State to regulate the use of motor vehicles on its highways has been recently considered by this court and broadly sustained. It extends to non-residents as well as to resident. It includes the right to exact reasonable compensation for special facilities afforded as well as reasonable provisions to ensure safety. And it is properly exercised in imposing a license fee graduated according to the horse power of the engine."

The theory of the tax imposed by statute here is consistent with the rulings of these cases. The case is one for the use of special privileges and facilities afforded by the public highways of the State and for enjoyment of these facilities and privileges, the State may tax both intrastate and interstate commerce. It is required, however, that the tax be in reasonable relation to the privilege. As long as the discretion exercised by the State goes to the point of exerting its taxing powers in proportion to and adjusting the scheme, basis and amount of the tax to the possible extent and result of the use of the roads, it is not an interference against interstate commerce. The State, however, may not enact a statute which requires an interstate carrier of passengers by motor bus to secure a certificate from its director of public works, to establish the public convenience and necessity requiring the operation of busses. And this, for the reason that such regulation is not one to secure [fol. 53] safety on the highways or to conserve them but is a prohibition of competition as applied to one desirous of using the highways as a common carrier of passengers. This is a violation of the commerce clause. Buck v. Kuykendall, 267 U. S. 310; Bush v. Maloy, 267 U. S. 317. Interstate business must pay its way and the expenses to others incident to the use of it. Postal Telegraph v. Richmond, 245 U. S. 259; Delaware Tax Case, 18 Wall., 222.

It is argued that a discrimination is accomplished between interstate and intrastate traffic by reason of an exemption from other forms of taxation granted under #6,

Part I of the enactment. It provides the cost imposed by the provisions of Part I of this Act "Shall be in lieu of all other taxes upon the intangible personal property exclusively owned, leased or used by such company in the conduct of such business, and of its rights, franchises, funded and floating debt, money and credits, account and bills receivable and shares of stock of any such company organized in this state, but the provisions hereof shall not be construed as exempting any company from complying with the provisions of the law relating to the fees payable to the motor vehicle commissioner for the licensing or registration of motor vehicles, and all busses employed in the business of any such company shall be subject to the statutes of this state pertaining to the operation, control and use of such vehicles upon the public highways."

By Sec. 7 it is provided: "No company subject to the provisions of part I of this act shall be subject to the provisions of Chapter 73 of the General Statutes as amended." And Chapter 73 provides for the taxation of miscellaneous [fol. 54] corporations, in which classifications are included motor vehicle operators for hire, the tax imposed being 2% of the income return for federal taxation. Both intrastate and interstate operators, if Connecticut corporations, are subject to taxation as miscellaneous corporations until Chapter 254 of the Laws of 1925 became effective, and the argument is that the intrastate operators are exempt from this 2% and all other forms of taxation while interstate operators are subject to all the forms they were subject to before in addition to one cent per mile; that is, that the intrastate traffic is favored as against interstate. But the complainant here is a corporation of Connecticut and a commutation of Sec. 6, Part I of this chapter adds nothing to the already existing commutation of Chap. 73 of the General Statutes of Connecticut of 1918. As a Connecticut corporation, it obtains the commutations granted. Nothing is lost to the complainant by reason of Chap. 254 to extend to Part II or the commutation of Sec. 6, Part I, and it cannot therefore argue the unconstitutionality of the statute, for it is not affected unjustly or deprived of any constitutional right.

The state has the power to exercise reasonable discretion to impose different taxes upon different trades and pro-

fessions. Armour v. Macy, 200 U. S. 226. To be a reasonable and therefore proper classification, it is sufficient to find that there was reason for the classification made of interstate motor vehicle carriers. It must not be arbitrary or vindicative. Classification is permissible which has a reasonable relation to some permitted end of government [fol. 55] action. Heisler v. Thomas Colliery Co., 260 U. S. 245. If it is not palpably arbitrary but is uniform within the clause, if it is within the range of legislative discretion allowed by the Federal Constitution. Mutual Loan Co. v. Martell, 222 U. S. 235. Even if we differed with the legislature regarding the soundness or wisdom of the policy which forms the basis of the classification made in this legislation, we may not interfere with the legislative discretion in this respect for there is reason enough for the classification supporting the argument that it was reasonable to the legislature. The similarity in purpose and use between intrastate and interstate motor vehicle carriers will not preclude a separation of the classification. There are difference reasonably distinguishing one from the other in their relation to the purposes of the tax, which is compensation for the use of the roads and reimbursement for the damage done to the roads. Both carry passengers and use the roads. Both carry passengers and use the roads. In one case, the state plainly has the authority to regulate the operation of busses and the use of the roads, and in the other, the whole operation is in the control of the operators. Classification based on different standards are found in the cases and have won judicial support, and this, from the fact of this relation to compensation for the use and damage to the highways. State v. Kozer, 242 Pa*x*. (Ore), 621; Ex Parte Schuler, 167 Cal. 282; McCreary v. Holm, 206 N. W. (Minn.) 942; Liberty Highway Co. v. Michigan, etc., 294 F. 703; Nolen v. Riechman, 225 F. 813; Westfalls, etc., v. Chicago, 280 Ill. 318.

[fol. 56] Classification being a valid means to the end, the practical factors referred to, underlying the scheme of classification to support the reasonableness of it, the method of taxation was discretionary with the State and therefore permissible. Kane v. New Jersey, supra.

It is argued that the Federal Highway Act Aid Legislation, to the states who have accepted the aid, deprived them of the power to impose excise upon the use of the

highways, but this purpose of Congress, that State highways shall be open to interstate commerce, was not intended and cannot effect the respective rights of State governments to require the interstate operator to share the expense of maintaining the road- while he is using them. Bush, etc., v. Maloy, 267 U. S. 317; Liberty Highway Co. v. Michigan, etc., 294 F. 703.

Nor is the act invalid because of the amount of the tax. The argument is that the tax and fees properly charged to the complainant, when added to the tax and fees properly charged to the complainant in other sections, results in making the tax exorbitant and confiscatory. The tax, standing alone, is not attacked in this respect, but only as to its alleged defect in connection with other tax charges. The effort is to invalidate this tax because of its amount, not because it is unreasonable. It is said to become so when added to other taxes. No claim is made that the other taxes are invalid. The courts may not revise the system of taxation of states for the purpose of producing a more just distribution of the burdens of taxation. That subject is within the province of the state legislature and it is with [fol. 57] that legislature that redress must be had. It is only where the tax clearly results in palpable inequality between the burden imposed and the benefit received and amounts to the arbitrary taking of property without compensation, that the Fourteenth Amendment can be said to be violated. Dane v. Jackson, 256 U. S. 599; The Federal Constitution does not invalidate a State excise tax because of its destructive amount. Alaska v. Smith, 255 U. S. 49; Ohio Tax case, 232 U. S. 593. The reasonableness of an excise tax for revenue does not depend upon whether a hardship may be worked in a single case, but upon the general operation of them all in the class to which it applies.

We are satisfied that the statute here considered is not in conflict with any of the provisions of the Federal Constitution. The arguments offered do not sustain the contentions of invalidity. The motion for an interlocuto injunction as prayed for in the bill of complaint is denied.

January 4th, 1927.

Martin T. Manton, Circuit Judge. Edwin S. Thomas, District Judge. Marcus B. Campbell, District Judge.

[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINAL DECREE

This cause coming duly on to be heard by said Court on the merits, on the third day of February, 1927, in the United States Court House and Post Office Building, in the City of New Haven, Connecticut, before three Judges, namely, Circuit Judge, Martin T. Manton, and District Judges, Edwin S. Thomas and Marcus B. Campbell, holding said Court pursuant to Section 266 of the Judicial Code (Comp. Statutes, Section 1243), and, theretofore, the complainant's application for an interlocutory injunction, as prayed for in the Bill of Complaint in the above-entitled cause, having, likewise, come on to be heard, and having been heard before said Court, duly constituted as aforesaid, and said application having been denied, in accordance with the written opinion, decision and order of said Court, dated January [fol. 59] 4th, 1927, and duly filed in said cause, and said cause being duly heard thereafter on the merits, upon the pleadings, agreed statement of facts, the complainant's evidence and exhibits and upon the motion of the defendants to dismiss said cause and bill on the merits, and said cause and motion having been duly argued, and the Court having thereupon decided and ordered that said cause and bill are without merit; and that complainant was not entitled to the relief sought thereby, and that said cause and bill be dismissed on the merits, it is

Ordered, adjudged, and decreed that said cause and bill be and the same hereby are dismissed, upon the merits, and the relief thereby prayed denied, with costs in favor of the defendant- against the complainant.

Martin T. Manton, United States Circuit Judge.
Marcus B. Campbell, United States District Judge.
Edwin S. Thomas, United States District Judge.

Dated February —, 1927.

Approved the 9th day of February, 1927, as to form.
Edward H. Kelly, Counsel and Solicitor for the Complainant.

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND SUSPENSION OF DECREE

Interstate Busses Corporation, Plaintiff herein, respectfully represents:

That Petitioner is aggrieved by the judgment and decree entered herein on February 17, 1927, in favor of Defendants against this Plaintiff, denying its application for injunction, as prayed for in its Bill of Complaint, with costs, and Petitioner, for reasons specified in the Assignment of Errors, filed herewith, desires to appeal from said decree, in accordance with the provisions of Section 238 and Section 266 of the Judicial Code, as amended, to the Supreme Court of the United States, and desires that said appeal shall operate as a supersedeas, and shall suspend and stay until final decree on appeal herein all process in the enforcement of, or in aid of, said decree, and until the hear-[fol. 61] ing of such appeal, and the going down of the mandate thereon, Defendants be ordered to desist and refrain from enforcement, or attempting to enforce, the provisions of Chapter 254 of the Laws of 1925 Part II thereof, and from refraining or suspending the registration of Complainant's motor vehicles, and from arresting and prosecuting Plaintiff's agents or employees, or otherwise interfering with Complainant in the conduct of its interstate business.

Wherefore, Petitioner Prays:

That said appeal may operate as a supersedeas, and may, during the pendency of said appeal, suspend the effect of said decree, and that Defendants, during the pendency of said appeal, be ordered to desist and refrain from enforcement, or attempting to enforce, the provisions of Chapter 254 of the Laws of 1925 Part II thereof, and from refraining or suspending the registration of Complainant's motor vehicles, and from arresting and prosecuting Plaintiff's agents or employees, or otherwise interfering with Complainant in the conduct of its interstate business.

And that a transcript of the records, proceedings, papers and exhibits, upon which said decree was rendered, duly authenticated, may be sent to the Supreme Court of the United States; and Petitioner prays for all general and equitable relief.

Edward H. Kelly, Solicitor and Counsel for Plaintiff, Interstate Busses Corporation.

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

Plaintiff, Interstate Busses Corporation, prays and appeals from the Final Decree of this Court to the Supreme Court of the United States, and assigns for error:

1. That Chapter 254 of the Public Acts of 1925 of the State of Connecticut is in contravention of the Constitution of the United States, especially of the Commerce Clause, Section 8 Article I.

2. That the United States District Court for the District of Connecticut erred in holding that said Act violated no rights of Plaintiff, and deprived it of no immunity, to which it is entitled under the Constitution of the United States, and did not constitute an unlawful burden or regulation upon interstate commerce.

[fol. 63] 3. The District Court erred in holding that the said Act was not invalid, because of the matters and things alleged in Plaintiff's Bill of Complaint, especially Section 8 Article I of the Constitution of the United States.

4. The District Court erred in holding, as set forth in its opinion, that said Chapter 254 of the Laws of 1925 does not constitute an unconstitutional burden and discrimination upon interstate commerce.

5. The District Court erred in refusing Plaintiff an Injunction restraining the enforcement of the provisions of Chapter 254 of the Laws of 1925 Part II thereof, and enjoining the suspension of registration of Complainant's

motor vehicles, and arresting and prosecution of Plaintiff's agents and employees.

6. The Court erred in the exclusion of the testimony of the Witness Alfred De Maris, offered for the purpose of showing the proportion of registration fees which are applied to the maintenance and construction of Connecticut Highways, to which ruling Plaintiff duly excepted.

Wherefore Plaintiff prays that the Decree of the District Court be reversed, and that Defendants be enjoined and restrained, as prayed for in its Bill of Complaint.

Edward H. Kelly, Solicitor and Counsel for the Plaintiff, Interstate Busses Corporation.

In United States District Court

Order Allowing Appeal and Suspension of Decree

Petition for appeal allowed; petition for suspension of decree pending appeal granted.

Edwin S. Thomas, United States District Judge.

New Haven, March 2, 1927.

[fols. 64-65a] Citation, in usual form, showing service on Stoddard, Goodhart, Wetzler & Persky, omitted in printing.

[fol. 66] In the Supreme Court of the United States, October Term, 1926

Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed March 23, 1927

Statement of Points to be Relied Upon and Designation by Appellant to Print the Entire Record, with Affidavit of Service

William R. Stansbury, Clerk of the United States Supreme Court, Washington, D. C.:

Please take notice that Interstate Busses Corporation, Appellant in the above entitled cause, hereby submits, as

a Statement of the Points on which it intends to Rely, the following:

1. That Chapter 254 of the Public Acts of 1925 of the State of Connecticut is in contravention of the Constitution of the United States, especially of the Commerce Clause, Section 8, Article I.

2. That the United States District Court for the District of Connecticut erred in holding that said Act violated no rights of Plaintiff, and deprived it of no immunity, to which it is entitled under the Constitution of the United States, [fol. 67] and did not constitute an unlawful burden or regulation upon interstate commerce.

3. The District Court erred in holding that the said Act was not invalid, because of the matters and things alleged in Plaintiff's Bill of Complaint, especially Section 8, Article I of the Constitution of the United States.

4. The District Court erred in holding, as set forth in its opinion, that said Chapter 254 of the Laws of 1925 does not constitute an unconstitutional burden and disrimination upon interstate commerce.

5. The District Court erred in refusing Plaintiff an Injunction restraining the enforcement of the provisions of Chapter 254 of the Laws of 1925 Part II thereof, and enjoining the suspension of registration of Complainant's motor vehicles, and arresting and prosecution of Plaintiff's agents and employees.

6. The Court erred in the exclusion of the testimony of the Witness Alfred DeMaris, offered for the purpose of showing the proportion of registration fees which are applied to the maintenance and construction of Connecticut Highways, to which ruling Plaintiff duly excepted.

And further that it considers necessary for consideration thereof printing the entire record, omitting only therefrom the title on all papers, except the Bill, all verifications, and Clerk's Certificate, transcript of record being forwarded to you by the Clerk of the United States District Court for the District of Connecticut.

Edward H. Kelly, Solicitor and Counsel for Appellant, Interstate Busses Corporation, 75 Pearl Street, Hartford, Connecticut.

[fol. 68 & 69] STATE OF CONNECTICUT,
County of Hartford, ss:

Edward H. Kelly, being duly sworn, deposes and says that he is an attorney and counselor-at-law and is the solicitor and counsel for the above-named appellant, Interstate Busses Corporation; that on the 21st day of March, 1927, he served a copy of the annexed statement and designation upon Stoddard, Goodhart, Wetzler & Persky, solicitors and counsel for the defendants herein, William H. Blodgett, Ernest E. Rogers, Frederick M. Salmon, Robbins B. Stoeckel, and Robert T. Hurley, and that such service was made by enclosing said copy in sealed postpaid wrappers and sending the same by registered mail, through the United States Postoffice, addressed to Stoddard, Goodhart, Wetzler & Persky, at Chamber of Commerce Building, New Haven, Connecticut.

Edward H. Kelly.

Sworn to before me this — day of March, 1927. Anna D. Birmingham. (Seal of Anna D. Birmingham, Notary Public, Hartford, Conn.)

[fol. 70] [File endorsement omitted.]

Endorsed on cover: File No. 32,549. Connecticut D. C. U. S. Term No. 197. Interstate Busses Corporation, appellant, vs. William H. Blodgett, Tax Commissioner of the State of Connecticut; Ernest E. Rogers, Treasurer of the State of Connecticut; Frederick M. Salmon, etc., et al. Filed March 17th, 1927. File No. 32,549.

FILED
NOV 21 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

INTERSTATE BUSSES CORPORATION,
Plaintiff-in-Error,

vs.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut, et al.,
Defendants-in-Error.

IN EQUITY—No. 197.

BRIEF FOR INTERSTATE BUSSES CORPORATION, PLAINTIFF-IN-ERROR.

EDWARD H. KELLY,
Solicitor and Counsel for the Plaintiff-in-Error,
75 Pearl Street, Hartford, Connecticut.

TABLE OF CONTENTS.

PAGE

STATEMENT OF FACTS AS TO JURISDICTION..... 1

STATEMENT OF FACTS..... 3

SPECIFICATION OF ASSIGNED ERRORS..... 5

SUMMARY OF ARGUMENT..... 6

POINT I—Chapter 254 of the Public Acts of 1925 of the State of Connecticut is in contravention of the Constitution of the United States, especially of the Commerce Clause, Section 8, Article I..... 8

POINT II—The United States District Court for the District of Connecticut erred in holding that said Act violated no rights of plaintiff, and deprived it of no immunity to which it is entitled under the Constitution of the United States, and did not constitute an unlawful burden or regulation upon interstate commerce..... 10

A. Even if it were assumed that this is such a tax or charge as the State might levy for revenue purposes, nevertheless it must be held invalid by reason of the fact that interstate transportation by motor vehicle of all business using the highways is singled out for the imposition of a tax of one cent a mile. On that ground alone, the statute must be held to be unconstitutional..... 10

PAGE

POINT III—The District Court erred in holding that the said Act was not invalid because of the matters and things alleged in plaintiff's bill of complaint, especially Section 8, Article I of the Constitution of the United States 16

B. The provision of Part II of Chapter 254 of the Laws of 1925 directing suspension of registration of a vehicle whose owner is subject to the provisions of Part II, also effects a discrimination against interstate operators by reason of the different remedies imposed for the collection of the tax. 22

POINT IV—The District Court erred in holding, as set forth in its opinion, that said Chapter 254 of the Laws of 1925 does not constitute an unconditional burden and discrimination against interstate commerce 24

A. A State cannot suspend or obstruct interstate commerce to compel payment of taxes 24

B. The acceptance of the provisions of Part I by plaintiff's agent does not impose a liability for this tax where none existed before 27

C. The purpose of Congress in granting Federal aid to the States in the construction of their highways is that such highways shall be open to interstate commerce..... 29

POINT V—The District Court erred in refusing plaintiff an injunction restraining the enforcement of the provisions of Chapter 254 of the Laws of 1925, Part II thereof, and enjoining the suspension of registration of complainant's motor vehicles, and

PAGE

arresting and prosecution of plaintiff's agents and employees 32

POINT VI—The Court erred in the exclusion of the testimony of the witness Alfred De Maris, offered for the purpose of showing the proportion of registration fees which are applied to the maintenance and construction of Connecticut highways, to which ruling plaintiff duly excepted 34

APPENDIX A—House Bill 1047—Chapter 254: An Act Providing an Excise on the Use of Public Highways by Public Service Motor Busses 36

APPENDIX B—Motor Vehicle Law, Chapter 400, Public Acts of 1921, Section 22, subdivision (c), providing for collection of registration fees on public service motor vehicles; and subdivision (u), providing for their application as compensation for privilege of using the highways, and to reimburse the State for injury to same 41

APPENDIX C—Chapter 145, Public Acts of 1925, Sections 4 and 6, providing a tax of two cents per gallon on gasoline, and its application to maintenance of highways 42

APPENDIX D—Chapter 73 of General Statutes of Connecticut—Miscellaneous Corporations 43

APPENDIX E—Section 1389 of the General Laws 44

APPENDIX F—Chapter 400 of the Laws of 1921 as amended by Chapter 257 of the Laws of 1923, Section 8 44

CASES CITED.

PAGE

Allen v. Pullman, 191 U. S. 171 24
American Steel & Wire Co. v. Speed, 192 U. S. 90 ... 10
Atchison Railroad v. O'Connor, 223 U. S. 286 32

Bouvier's Law Dictionary, Vol. 1, p. 1109 (3rd Ed.) . 8
Bremmer v. Rebman, 138 U. S. 78 ..... 10, 13
Bush & Sons v. Maloy, 267 U. S. 317 29

Chalker v. Birmingham, 249 U. S. 526 23
Clark v. Poor, 71 L. Ed. (U. S.) 776 10
Cotting v. Kansas City Stock Yards Co., 183 U. S. 100 33

Darnell v. Memphis, 208 U. S. 113 ..... 10, 15, 19

Frost v. California, Law. Ed. Advance Sheets, U. S. Sup. Ct., decided June 7, 1926 28

Guy v. Baltimore, 100 U. S. 434 ..... 10, 11, 19

Hendrick v. Maryland, 235 U. S. 610 ..... 8, 29
Hill v. Wallace, 259 U. S. 62 32

Kane v. New Jersey, 242 U. S. 160 ..... 8, 29

Leloup v. Mobile, 127 U. S. 640 24

Minnesota v. Barber, 136 U. S. 320 10

Pollock v. Farmers L. & T. Co., 157 U. S. 629 8
Postal Telegraph v. Adams, 155 U. S. 688 ..... 24, 27
Pullman v. Richardson, 261 U. S. 330 ..... 9, 24

Raymond v. Chicago, 207 U. S. 20 32

PAGE

Stafford v. Wallace, 258 U. S. 512..... 32
State Freight Tax Case, 15 Wall. 232..... 9
State of Connecticut v. Hartford, 50 Conn. 90..... 33
St. Louis & Southwestern R. R. v. Arkansas, 235 U. S. 350.....24, 26

Terrace v. Thompson, 263 U. S. 197..... 32

Underwood v. Chamberlain, 254 U. S. 119.....24, 27

Voight v. Wright, 141 U. S. 62.....10, 14

Western Union v. Alabama, 132 U. S. 472..... 24
Western Union v. Kansas, 216 U. S. 1..... 28
Western Union v. Massachusetts, 125 U. S. 530....24, 25
Western Union v. St. Louis, 148 U. S. 92..... 9
Wilson v. Illinois Southern, 263 U. S. 574..... 32

Young, Ex parte, 209 U. S. 145..... 32

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

INTERSTATE BUSSES CORPORATION, Plaintiff-in-Error, vs. WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut; ERNEST E. ROGERS, Treasurer of the State of Connecticut; FREDERICK M. SALMON, Comptroller of the State of Connecticut; ROBBINS B. STOECKEL, Commissioner of Motor Vehicles of the State of Connecticut, and ROBERT T. HURLEY, Superintendent of Police of the State of Connecticut, Defendants-in-Error.	In Equity 197.

BRIEF FOR INTERSTATE BUSSES CORPORATION, PLAINTIFF-IN-ERROR.

Statement of Facts on Which Jurisdiction of Supreme Court of United States is Invoked.

This is an appeal to this Court from a final decree of the District Court of the United States for the District

of Connecticut, by which decree a temporary and permanent injunction prayed for in appellant's bill of complaint was denied and said bill was dismissed (R. 42).

In the prayer for relief contained in its bill plaintiff prayed for an interlocutory and permanent injunction restraining as to it the enforcement of Chapter 254 of the Laws of 1925 of the State of Connecticut, as in conflict with the Commerce Clause, Section 8, Article I, and also as in conflict with the Fourteenth Amendment of the Federal Constitution (R. 5). The claim under the Fourteenth Amendment was not pressed on the hearing. Copy of said Chapter 254 of the Laws of 1925 is set forth in the Appendix, and Part II thereof provides for the imposition of a tax or excise of one cent per mile to be paid by operators of motor vehicles carrying passengers over any highway in the State from a point outside the State to another point outside the State, from a point outside the State to a point within the State, or from a point within the State to a point ouside the State.

No mileage tax has been imposed upon operators of motor vehicles operating in intrastate commerce (R. 15).

The application for an interlocutory judgment was denied, the opinion on said application having been filed herein on January 4, 1927 (R. 35; Opinion below, Fed. Rep., 2nd Series, Vol. 19, p. 256).

The matter then came on for hearing on the merits on the 3rd day of February, 1927, and a final decree dismissing the bill was entered on the 9th day of February, 1927. Both hearings were before a District Court constituted of three Judges, as provided by Section 266 of the Judicial Code; and the appeal to this Court was taken pursuant to the provisions of Section 238 of the Judicial Code, as amended by Act of February 13, 1925.

Statement of Facts.

The State of Connecticut has adopted a system of financing its highway construction and maintenance, by which approximately 80 per cent. of the cost of such construction and maintenance is paid by persons operating motor vehicles upon such highways. This amount is collected by the Commissioner of Motor Vehicles for registration fees on vehicles, operators' license fees, gasoline tax, fines and penalties. These amounted to $15,227,745.12 for the two years' period beginning June 1, 1924, and ending June 30, 1926. The remaining 20 per cent. of the cost of highway construction and maintenance was made up of appropriations by the State Legislature of $3,166,500 and Federal aid, $1,083,451.72 (R. 23-26).

Appellant is a Connecticut corporation engaged in the transportation of passengers by motor vehicle; the only business done by it in Connecticut is interstate commerce, being the carriage of passengers from points within to points without the State, or the reverse, or the carriage of passengers between points in other States, but over Connecticut highways. It does no intrastate business in Connecticut (R. 4-14).

It began operation in the year 1924, but kept no correct and proper record of the mileage operated over Connecticut highways for the first half of the year 1925, prior to the enactment of Chapter 254 of the Laws of 1925. Correct records were kept after the enactment of the law, that is, for the six months' period following July 1st, and, on the basis of both returns, the defendants have demanded payment of the tax for the entire year in the sum of $2,255.70 (R. 13).

It is admitted that it is the defendants' intention to revoke registration of complainant's motor vehicles, as

required by the above-mentioned law, and that operation of such motor vehicles without registration will subject the operators thereof to arrest, fine and imprisonment (R. 19-20).

This is the only method for enforcing collection of the tax imposed on interstate operators provided by the Act (see Appendix, Part II, Sec. 3).

Local or intrastate operators are required to pay only an excise tax of 3 per cent. of their gross receipts from their intrastate operation, from which is deducted the amount of property taxes paid locally in this State on real and tangible personal property; and they are also exempted from all other forms of taxation, including the provisions of Chapter 73 of the General Statutes as amended, which provides for taxation of miscellaneous corporations in amount of 2 per cent. of the net income upon which such operator is required to pay a tax to the United States.

The interstate operator is denied these exemptions and deductions, even though a Connecticut corporation, as is this plaintiff.

It is admitted (R. 6-15) that, outside of and beyond this mileage tax, the interstate operator contributes to the maintenance of Connecticut highways in the same manner and to the same extent as other persons or corporations contribute thereto. This is done through the payment of registration fees on his vehicles, and an enhanced price for gasoline, because of a tax on the latter, all of which, less the expense of administration, is applied as compensation for the privilege of using the highways and to reimburse the State in whole or in part for injury done to the highways [see Appendix B, Chap. 400 of the Public Acts of 1921, as amended by Chaps. 257 and 280 of the Public Acts of 1923 and by Chaps. 195 and 235 of

the Public Acts of 1925, sub-title "Fees," Sec. 22, subd. (u)].

These fees afford the State practically 80 per cent. of the revenue required in the construction and maintenance of highways (R. 26).

Plaintiff also pays, as a miscellaneous corporation, income taxes of 2 per cent. of its income as determined by its Federal income tax return, under Chapter 73, General Laws (Appendix D).

Further facts appear in the agreed statement found in the record (R. 16).

Specification of Assigned Errors Intended to be Urged.

1. That Chapter 254 of the Public Acts of 1925 of the State of Connecticut is in contravention of the Constitution of the United States, especially of the Commerce Clause, Section 8, Article I.

2. That the United States District Court for the District of Connecticut erred in holding that said Act violated no rights of plaintiff, and deprived it of no immunity to which it is entitled under the Constitution of the United States, and did not constitute an unlawful burden or regulation upon interstate commerce.

3. The District Court erred in holding that the said Act was not invalid because of the matters and things alleged in plaintiff's bill of complaint, especially Section 8, Article I of the Constitution of the United States.

4. The District Court erred in holding, as set forth in its opinion, that said Chapter 254 of the Laws of 1925

does not constitute an unconstitutional burden and discrimination upon interstate commerce.

5. The District Court erred in refusing plaintiff an injunction restraining the enforcement of the provisions of Chapter 254 of the Laws of 1925, Part II thereof, and enjoining the suspension of registration of complainant's motor vehicles, and arresting and prosecution of plaintiff's agents and employees.

6. The Court erred in the exclusion of the testimony of the witness Alfred De Maris, offered for the purpose of showing the proportion of registration fees which are applied to the maintenance and construction of Connecticut highways, to which ruling plaintiff duly excepted.

Summary of Argument.

Point I.

Chapter 254 of the Public Acts of 1925 of the State of Connecticut is in contravention of the Constitution of the United States, especially of the Commerce Clause, Section 8, Article I.

Point II.

The United States District Court for the District of Connecticut erred in holding that said Act violated no rights of plaintiff, and deprived it of no immunity to which it is entitled under the Constitution of the United States, and did not constitute an unlawful burden or regulation upon interstate commerce.

POINT III.

The District Court erred in holding that the said Act was not invalid because of the matters and things alleged in plaintiff's bill of complaint, especially Section 8, Article I of the Constitution of the United States.

POINT IV.

The District Court erred in holding, as set forth in its opinion, that said Chapter 254 of the Laws of 1925 does not constitute an unconditional burden and discrimination against interstate commerce.

POINT V.

The District Court erred in refusing plaintiff an injunction restraining the enforcement of the provisions of Chapter 254 of the Laws of 1925, Part II thereof, and enjoining the suspension of registration of complainant's motor vehicles, and arresting and prosecution of plaintiff's agents and employees.

POINT VI.

The Court erred in the exclusion of the testimony of the witness Alfred De Maris, offered for the purpose of showing the proportion of registration fees which are applied to the maintenance and construction of Connecticut highways, to which ruling plaintiff duly excepted.

POINT I.

Chapter 254 of the Public Acts of 1925 of the State of Connecticut is in conflict with the Constitution of the United States, especially of the commerce clause, Section 8, Article I.

Considering the burden here as an excise or tax, it is clearly beyond the State's power to impose it.

But it is claimed that because the Act recites that it is for use of the highways, it is not in fact a tax, but a toll or charge for special facilities in the way of improved highways furnished by the State, and the cases of *Hendrick* v. *Maryland*, 235 U. S. 610, and *Kane* v. *New Jersey*, 242 U. S. 160, are cited.

Whatever the declared purpose, this Court has a right to exercise its own judgment as to the real purpose and intent.

In the first place, the Act itself describes the imposition as an excise; in other words, a tax.

> *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 629.
>
> *Bouvier's Law Dict.*, Vol. I, p. 1109 (3rd Ed.).

Secondly, compensation for the privilege of using the highways of Connecticut is demanded of and paid by every owner of a public service motor vehicle, including those engaged in interstate transportation, under the authority of Chapter 400, Public Acts of 1921, Section 22, subdivision (u) (see Appendix B, also R. 24 *et seq.*).

This plaintiff already pays the State of Connecticut compensation for the use it makes of its highways, the same as every other owner of a public service motor vehicle (R. 28 *et seq.;* Bill, par. 16, R. 6).

It is therefore proper to describe this charge as an excise, but when it is further described as compensation for the use of highways, it is simply a contradiction in terms; and if held to be compensation, it is simply in duplication of, or additional to, the charges imposed by Chapter 400, Public Acts of 1921, Section 22, subdivision (u) (Appendix B).

This charge is either a tax or a toll.

> "A tax is a demand of sovereignty—a toll a demand of proprietorship."
>
> *Western Union* v. *St. Louis*, 148 U. S., p. 92.

A State has no power to tax interstate commerce at all, or the privilege of carrying it on or the receipts therefrom.

> *State Freight Tax Case*, 15 Wall. 232.
> *Pullman* v. *Richardson*, 261 U. S. 330.

Not having the right to demand in its sovereign capacity the payment of a tax, it asserts a right in its capacity of a proprietor, demanding compensation for special facilities furnished. But, as the record shows (23-28), it has already received compensation from the plaintiff to the same extent as it receives it from other users of its highways.

The case for defendants is not aided by the fact that the 3 per cent. of gross receipts received from the local operator is also applied as compensation for the use of highways in addition to the registration fee which he pays.

Inasmuch as he is relieved of all other taxes and charges for the support of State government, it is immaterial to him whether the State describes it as an excise for the use of the highways, and so applies it.

It has the right to impose this charge and grant the exemptions given as a tax measure, applying the moneys received as it sees fit.

Clark v. *Poor*, 71 L. Ed. (U. S.) 776.

POINT II.

The United States District Court for the District of Connecticut erred in holding that said Act violated no rights of plaintiff, and deprived it of no immunity, to which it is entitled under the Constitution of the United States, and did not constitute an unlawful burden or regulation upon interstate commerce.

A.

Even if it were assumed that this is such a tax or charge as the State might levy for revenue purposes, nevertheless it must be held invalid by reason of the fact that interstate transportation by motor vehicle of all business using the highways is singled out for the imposition of a tax of one cent a mile. On that ground alone, the statute must be held to be unconstitutional.

Guy v. *Baltimore*, 100 U. S. 434.
Brimmer v. *Rebman*, 138 U. S. 78.
Voight v. *Wright*, 141 U. S. 62.
Minnesota v. *Barber*, 136 U. S. 320.
American Steel & Wire Co. v. *Speed*, 192 U. S. 90.
Darnell v. *Memphis*, 208 U. S. 113.

The above cases were all cases in which a tax, charge or regulation was sought to be imposed, the effect of which was to work a discrimination against interstate commerce,

the tax, charge or regulation itself being otherwise valid, except for the discrimination effected.

The case of *Guy* v. *Baltimore, supra,* arose under a municipal ordinance of the City of Baltimore, adopted pursuant to an Act of the Maryland Legislature, which ordinance prescribed a wharfage fee to all vessels transporting to, and discharging at, the wharf, goods or articles other than the production of the State of Maryland. Guy, a citizen of Virginia, unloaded at the wharf potatoes raised in Virginia. He was sued for wharfage by the City of Baltimore, judgment was rendered against him in a justice court, which judgment was affirmed by the City Court of Baltimore, the highest court in Maryland in which a decision might be had, and writ of error sued out to the Supreme Court of the United States. After stating the facts, the Court, by Justice Harlan, proceeds:

> "The argument in support of the statute and ordinance upon which the judgment below rests is that the city, by virtue of its ownership of the wharves in question, has the right, in its discretion, to permit their use to all vessels landing thereat with the products of Maryland; and that those operating vessels, laden with the products of other states, cannot justly complain, so long as they are not required to pay wharfage fees in excess of reasonable compensation for the use of the city's property.
>
> This proposition, however ingenious or plausible, is unsound, both upon principle and authority. The municipal corporation of Baltimore was created by the State of Maryland to promote the public interests and the public convenience. The wharf at which appellant landed his vessel was long ago dedicated to public use. The public, for whose benefit it was acquired, or who are entitled to participate in its use, are not alone those who may engage in the transportation to the Port of Baltimore of the products of Maryland. It embraces,

necessarily, all engaged in trade and commerce upon the public navigable waters of the United States. Every vessel employed in such trade and commerce may traverse those waters without let or hindrance from local or state authority; and the national Constitution secures to all, so employed, without reference to the residence or citizenship of the owners, the privilege of landing at the Port of Baltimore with any cargo whatever, not excluded therefrom by, or under the authority of, some statute in Maryland enacted in the exertion of its police powers. The state, it will be admitted, could not lawfully impose upon such cargo any direct public burden or tax because it may consist, in whole or in part, of the products of other states. The concession of such a power to states would render wholly nugatory all national control of commerce among the states, and place the trade and business of the country at the mercy of local regulations, having for their object to secure exclusive benefits to the citizens and products of particular states. But it is claimed that a state may empower one of its political agencies, a mere municipal corporation representing a portion of its civil power, to burden interstate commerce by exacting from those transporting to its wharves the products of other states wharfage fees, which it does not exact from those bringing to the same wharves the products of Maryland. The city can no more do this than it or the state could discriminate against the citizens and products of other states in the use of the public streets or other public highways. The City of Baltimore, if it chooses, can permit the public wharves, which it owns, to be used without charge. Under the authority of the state, it may also exact wharfage fees equally, from all who use its improved wharves, provided such charges do not exceed what is fair remuneration for the use of its property. * * * But it cannot employ the property it thus holds for public use so as to hinder, obstruct, or burden interstate commerce in the interest of commerce wholly in-

ternal to that state. The fees which it exacts to that end, although denominated wharfage dues, cannot be regarded, in the sense of our former decisions, as compensation merely for the use of the city's property, but as a mere expedient or device to accomplish, by indirection, what the state could not accomplish by a direct tax, viz., build up its domestic commerce by means of unequal and oppressive burdens upon the industry and business of other states.

Such exactions, in the name of wharfage, must be regarded as taxation upon interstate commerce. Municipal corporations, owning wharves upon the public navigable waters of the United States, and quasi public corporations transporting the products of the country, cannot be permitted by discriminations of that character to impede commercial intercourse and traffic among the several states and with foreign nations.

In the exercise of its police powers, a state may exclude from its territory, or prohibit the sale therein of any articles, which, in its judgment, fairly exercised, are prejudicial to the health, or which would endanger the lives or property of its people. But if the state, under the guise of exerting its police powers, should make such exclusion or prohibition applicable solely to articles of that kind, that may be produced or manufactured in other states, the courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States.

The power of the national government over commerce with foreign nations and among the several states is broad and comprehensive. It reaches the interior of every state of the Union, so far as it may be necessary to protect the products of other states and countries from discrimination by reason of their foreign origin."

Brimmer v. *Rebman, supra,* involved the consideration of a statute of Virginia making it unlawful to sell within the State any fresh meats slaughtered more than 100 miles

from the place it was offered for sale, until it had been inspected and approved as provided in the Act.

Mr. Justice Harlan, delivering the opinion of the Court in that case, said:

> "Undoubtedly a state may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with powers conferred by the Constitution upon Congress or infringe rights granted or secured by that instrument. But it may not under the guise of exerting its police power or of enacting inspection laws make discriminations against the products and industries of some of the states in favor of the products of its own or other states. * * * Nor can this statute be brought into harmony with the Constitution by the circumstance that it purports to apply alike to the citizens of all the states, including Virginia; for, 'a burden imposed by a state upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the states, including the people of the state enacting such statute.'"

Voight v. *Wright*, 141 U. S. 62, also involved a statute of Virginia and was a writ of error to the Corporation Court of Norfolk, Va., the highest court to which an appeal might be taken from a judgment of a Justice's Court, awarding $15 inspection fees to a flour inspector for inspecting flour brought into Virginia from other States, the statute, however, exempting from inspection flour produced in Virginia.

After discussing inspection laws and the subject to which they may properly be applied, Mr. Justice Bradley, writing the opinion of the Court, says:

> "* * * Without attempting to lay down any specific proposition on this somewhat difficult sub-

> ject, there is enough in the case before us to decide it on satisfactory grounds, without passing on the right of the state to inspect imports or the qualifications to which it must necessarily be subject.
>
> The law in question is a discriminating law and requires the inspection of flour when brought from other states when such inspection is not required for flour manufactured in Virginia. This aspect of the case brings it directly within the principle of Brimmer v. Rebman, 138 U. S., page 78, decided at the present term."

In *Darnell* v. *Memphis*, 208 U. S., page 113, the City of Memphis brought suit for a tax on logs brought to the plaintiff's sawmill in Memphis, said logs being the product of another State. The discrimination became operative by reason of a provision of the statute of Tennessee granting an exemption from taxation to the products of the soil of Tennessee, which such products were in the hands of the producers or their immediate vendors. This exemption was held by the Supreme Court of the United States to work a discrimination against the products of other States and a burden upon interstate commerce. That, notwithstanding the logs might be taxed as a part of the general mass of property within the State, after coming to rest therein, a State which, in effect, singled out such products of interstate commerce, by granting an exemption to local products, burdened and restricted interstate commerce and must be held to be in conflict with the Commerce Clause. That, while it might be taxed, as all similar property is taxed, the effect of the exemption to the local product worked a discrimination.

> "The leading cases announcing the doctrine that a state may tax property which had moved in the channels of interstate commerce, when said property had become at rest therein, even before sale in the original package, are Woodruff v. Parham, 8

Wall. 123; Brown v. Houston, 114 U. S. 622; but in both those cases it was sedulously pointed out that the power which was thus recognized did not, and could not, include the authority to burden the property brought from another state with a discriminating tax. In American Steel Wire Co. v. Speed, 192 U. S. 500, 519, where the doctrine of Woodruff v. Parham and Brown v. Houston was reviewed and restated, it was pointed out that to prevent the levy of a tax upon property brought from another state, even after it had come at rest within a state, from being a direct burden upon interstate commerce, property so situated must be taxed 'without discrimination,' like other property situated within the state."

POINT III.

The District Court erred in holding that the said Act was not invalid, because of the matters and things alleged in plaintiff's bill of complaint, especially Section 8, Article I of the Constitution of the United States.

The opinion of the Court, found in the record here, was filed at the time of denying the application for an interlocutory injunction. It would indicate that the Court misapprehended the facts in the record then before it.

The Court says (R. 36):

> "By the Connecticut law, the intrastate carrier is subject to the jurisdiction of its Utilities Commission and its rules and regulations, announces routes, fares, speeds, schedules, continuity of service, the convenience and safety of passengers and the public. Such carrier may only engage in business after having obtained a certificate of public convenience and necessity from the Commission

specifying the route to be covered and the service to be rendered. Townships, cities and boroughs, touched by such operation, are permitted to be heard. Certificates are subject to amendment and revocation. Fines for violation of the law, regulations and orders (fol. 51) are issued, carriers are required to register their cars, insurance or surety bonds are required, indemnifying against injury to person and property. *The interstate carrier is subject only to pay the mileage tax above referred to.* He selects his own routes and roads at will. He may travel them as often as he wishes as the calls of his business may require. *He fixes his rates of traffic and contributes nothing toward the upkeep of the roads or the building of new ones.* He carries no insurance, by regulation of law, for the benefit of those who suffer injury to person or property, and he is not required to report to the public officials in any manner except by the command of the present enactment. If the State is permitted to impose the excise tax referred to, it is in no sense a discrimination against interstate commerce. On the contrary, it is a means of creating equality of the burden of taxation exacted and the burden of road use and damage thereto." (Italics ours.)

On this hearing the Court had before it the bill (R. 1), answer (R. 14) and agreed facts (R. 16). Paragraph 16 of the bill is as follows:

"Complainant further alleges that, outside of and beyond this mileage tax, it contributes to the maintenance of the highways of Connecticut in the same manner and to the same extent as other persons or corporations contribute thereto, by the payment of all property and excise taxes properly assessed against it by the payment of the registration fees on thirteen (13) of its motor vehicles used in interstate commerce, and an enhanced price for gasoline purchased for their use in Connecticut, by reason of a tax of two cents per gallon levied by the State of Connecticut, both of which latter items,

subject to the expenses of administration, are applied directly to highway construction and maintenance."

This is not denied by the answer.

Paragraph 22 of the agreed facts is as follows:

"The plaintiff pays property taxes to the City of Hartford on three motor busses, that being the average number located and used within the state. It is also subject to a state tax of two per cent. on the amount of its income reported for taxation under the Federal Income Tax Law, as required of miscellaneous corporations under Chapter 73 of General Statutes, and pays to the State of Connecticut registration fees upon thirteen (13) motor vehicles used in interstate commerce, and an enhanced price on gasoline, by reason of a tax imposed thereon by the State of Connecticut. Such gasoline tax, however, is not imposed upon the users thereof, but is imposed solely on dealers in gasoline, and the plaintiff is not subject to, or liable for, nor does it pay, the so-called gasoline tax, except as the price is enhanced to the extent thereof. Such gasoline tax is applied directly to highway construction and maintenance, under the authority of the Highway Commissioner of Connecticut, pursuant to the provisions of Section 6 of the Public Acts of 1925, and said registration fees are imposed as license fees applicable to the administration of the motor vehicle law, and for compensation for the privilege of using the highways, and to reimburse the state in whole or in part for injury done such highways, under provisions of Chapter 400 of the Laws of 1921, Section 22, subdivision (u)."

When the matter came on for hearing on the merits (R. 22), evidence was offered showing in detail the facts as to the charges already borne by plaintiff for the upkeep

of highways, and that the Court was in error in its assumption on the application for an interlocutory injunction that plaintiff contributed nothing to the upkeep of roads or the building of new ones.

The Court, nevertheless, adhered to its first view.

The exemptions to the local operator accomplish a discrimination similar to that condemned in *Darnell* v. *Memphis*, 208 U. S. 113, and *Guy* v. *Baltimore*, 100 U. S. 434. Section 6 of Part I provides as follows:

> "The excise imposed by the provisions of Part I of this act shall be in lieu of all other taxes upon the intangible personal property exclusively owned, leased or used by such company in the conduct of such business, and of its rights, franchises, funded and floating debts, money and credits, accounts and bills receivable and shares of stock of any such company organized in this state, but the provisions hereof shall not be construed as exempting any company from complying with the provisions of the law relating to the fees payable to the motor vehicle commissioner for the licensing or registration of motor vehicles, and all busses employed in the business of any such company shall be subject to the statutes of this state pertaining to the operation, control and use of such vehicle upon the public highways."

As the Court correctly points out, the commutation provided for here adds nothing to the commutation already provided by Chapter 73, where a corporation is concerned. But the Court's error is in overlooking the exemption to the local operator from the provisions of Chapter 73 provided by Part I, Section 7, and the credit for local taxes paid provided by Section 3.

By Section 7 it is provided that no company subject to the provisions of Part I of this Act shall be subject to the

provisions of Chapter 73 of the General Statutes as amended.

Chapter 73 of the General Statutes provides for the taxation of miscellaneous corporations, in which classification are included motor vehicle operators for hire, the tax imposed being 2 per cent. of the income returned for Federal taxation (see Appendix E).

Both interstate and local operators, if Connecticut corporations, were subject to taxation as miscellaneous until Chapter 254 of the Laws of 1925 became effective. Now, local operators are exempt from this 2 per cent. and all other forms of taxation, except 3 per cent. of gross receipts, while interstate operators are subject to all the forms of taxation they were subject to before, and, in addition, one cent per mile.

It is provided by Section 3 of Part I as follows:

> "The amount of the excise to be annually paid shall equal three per centum of the gross receipts of such company from such operations for the period covered by each such report *less the amount of taxes paid in any town in this state on the real and tangible personal estate of such company*, which estate was assessed in its name on the tax date next but one preceding the filing of its return and which was used in whole or in part in the conduct of such business, but, if such real or tangible personal estate was in part used in such business by the company, only an equitable portion of such tax, as determined by the tax commissioner, based on the relative value of the space so used, shall be so deducted." (Italics ours.)

The charge of 3 per cent. of gross receipts imposed on the local operator for use of the highways is largely illusory, for this reason: His garage, terminal, busses and equipment, used in the conduct of his intrastate busi-

ness, are located within, and property taxes on them paid to, the cities and towns in Connecticut where he carries on his business.

When he presents to the State Treasurer receipts showing payment of these local property taxes, he receives a credit on account of the 3 per cent. gross tax, which credit will partly or wholly cancel the 3 per cent. charge.

The matter then comes to this, that the local operator, outside of the registration fees, pays to the State, and the cities and towns where he does business, an aggregate amount equal to 3 per cent. of his gross receipts from operation, and nothing else.

The interstate operator pays, in addition to registration fees,

(1) the same local property taxes paid by the intrastate operator;

(2) two per cent. of his income returned to the Federal Government, and

(3) one cent per mile for mileage operated in interstate commerce.

Now, let us assume that the State has the right to impose a charge on the interstate operator for the use of its highways on the same basis as that by which it charges the local operator; that it has power to charge either on a mileage basis or on a basis of gross receipts.

Would it be contended that the legislation would be valid if it provided that the local operator, on paying his mileage tax, would be exempt from all other forms of taxation, granting no similar exemption to the interstate operator?

Does the exemption render it any less invalid because a different base is taken for the charge in each case? Can this ingenious, if somewhat complicated, scheme of charges

and exemptions render that valid which would otherwise be invalid?

B.

The provision of Part II of Chapter 254 of the Laws of 1925 directing suspension of registration of a vehicle whose owner is subject to the provisions of Part II, also effects a discrimination against interstate operators by reason of the different remedies imposed for the collection of the tax.

It effects this discrimination against interstate operators, in addition to that heretofore considered, for the reason that, for the collection of a tax, it provides in their case the drastic remedy of the suspension of registration and the consequent obstruction of interstate business, whereas, in the case of local operators, the provisions for the collection of the tax are those provided in Section 1389 of the General Statutes, being a complaint to the Superior Court in the nature of a petition in equity, and providing for a hearing on notice at a time and place designated in such notice; and, further, on such hearing, the court shall determine whether such tax is due and has not been paid (see Chap. 254, Laws of 1925, Sec. 7, and Sec. 1389, General Statutes of Connecticut, in Appendices A and E).

> "If the tax provided for in this part is not paid within ten days after the same becomes due, the treasurer shall apply to the Superior Court by complaint in the nature of a petition in equity, setting forth the non-payment of such tax and describing the property and choses in action of such company and the name of the agent or officer of such company subscribing the return or reports required to be made by this part, and the names of the persons filling said offices; and the court shall appoint a time for hearing and cause reasonable notice there-

> of to be given to the adverse party, and at the time and place designated in such notice shall hear the parties."

It can scarcely be doubted that the difference in the methods of collection provided by this Act in the case of local and interstate operators was intended to favor local operators, and to impose the drastic remedy of suspension, without hearing, in the case of interstate operators, and constitutes an invalid discrimination within the authorities cited above.

Can it be doubted that if both kinds of traffic were taxed one cent a mile, but with the different remedies for collection herein prescribed, it would be an unconstitutional discrimination?

The Court's argument sustaining the classification set up by this legislation for purposes of taxation goes down before the opinion of this Court in *Chalker* v. *Birmingham*, 249 U. S., at page 526:

> "The power of a state to make reasonable and natural classifications for purposes of taxation is clear and not questioned; but neither under form of classification nor otherwise can any state enforce taxing laws, which, in their practical operation, materially abridge or impair the equality of commercial privileges secured by the Federal Constitution to citizens of the several states."

POINT IV.

The District Court erred in holding, as set forth in its opinion, that said Chapter 254 of the Laws of 1925 does not constitute an unconstitutional burden and discrimination upon interstate commerce.

A.

A State cannot suspend or obstruct interstate commerce to compel payment of taxes.

Even apart, however, from the discrimination effected, and even though the same drastic remedy were applied to local operators as well as interstate operators, as to the latter, the provision for suspension of registration (see Appendix A, Part II, Sec. 3) would be invalid, in any event, for the reason that it is not permissible by such means for the mere collection of a tax to obstruct, embarrass or impede interstate commerce.

Western Union Telegraph Co. v. *Massachusetts*, 125 U. S. 530.
St. Louis & Southwestern Railroad v. *Arkansas*, 235 U. S. 350.
Postal Telegraph Co. v. *Adams*, 155 U. S. 688.
Leloup v. *Mobile*, 127 U. S. 640.
Western Union v. *Alabama*, 132 U. S. 472.
Allen v. *Pullman*, 191 U. S. 171.
Underwood v. *Chamberlain*, 254 U. S. 113.
Pullman Co. v. *Richardson*, 261 U. S. 330.

In the *Pullman* case, 261 U. S. 338, which is one of the most recent decisions on this question, the tax was held to be a valid property tax on property located or commonly used within the State. The statute had a provision that

a foreign corporation which failed to pay the tax should be excluded from doing business in the State. The Pullman Company was a foreign corporation engaged in interstate business in California, and the Supreme Court, in discussing this provision, said:

> "The provision has not been construed by the state court. If it is construed as covering interstate commerce, it is void, for the right to engage in such commerce is not within the state's control. (Citing cases.) The state court may construe it as confined to intrastate business."

It will be seen from an examination of all the foregoing cases cited under this subdivision that the collection of a State tax cannot be enforced by interfering with or obstructing interstate commerce. If the registration of motor vehicles of the plaintiff should be suspended by the defendant Stoeckel, as is required under the provision of Part II of Chapter 254 of the Laws of 1925, it would be equivalent to the removing from the highways of plaintiff's vehicles, for the reason that plaintiff's drivers would be immediately subject to arrest, fine and imprisonment for driving motor vehicles, the registration of which has been suspended (see Appendix F).

In *Western Union Telegraph Co.* v. *Massachusetts*, 125 U. S. 530, a statute of Massachusetts, on the non-payment of a State tax by a corporation, authorized the issuance of an injunction, directed to the corporation, its officers and agents, commanding them to desist and refrain from the further prosecution of the business of said corporation within the State until the sum due the Commonwealth for taxes shall have been fully paid, etc.

Suit was brought against the telegraph company in the Circuit Court of the United States, which found the tax valid, granted an injunction in accordance with the prayers of the bill, thereby giving effect to the State en-

actment. The validity of the tax was sustained by the Supreme Court of the United States, but not the remedy by injunction. As to that feature of the case, the opinion is as follows:

> "If the Congress of the United States had authority to say that the company might construct and operate its telegraph over these lines, as we have repeatedly held it had, the state can have no authority to say it shall not be done. The injunction in this case, though ordered by a Circuit Court of the United States, is only granted by virtue of Section 54 of Chapter 13 of the Public Statutes of Massachusetts. If this statute is void, as we think it is, so far as it prescribes this injunction as a remedy to enforce the collection of its taxes by the decree of the court awarding it, the injunction is erroneous.
>
> In holding this portion of Section 54 of Chapter 13 of the Massachusetts Statutes to be void as applicable to this case, we do not deprive the state of the power to assess and collect the tax. If a resort to a judicial proceeding to collect it is deemed expedient, there remains to the court all the ordinary means of enforcing its judgment—executions, sequestration, and any other appropriate remedy in chancery."

In *St. Louis & Southwestern Ry. Co.* v. *Arkansas*, 235 U. S. 350, the validity of the tax was upheld but the remedy as applied to interstate commerce was not, the Court commenting on the latter as follows:

> "Thus far we have dealt only with the authority of the state to levy a tax of this character, and with the mode in which the amount of the tax is ascertained. But the case presents another question that is more serious. By Paragraph 20 of Act No. 112 it is enacted: 'In case any corporation shall fail to pay the franchise tax prescribed by this Act when it becomes due during the term of

said certificate, the said tax commission shall cancel said certificate, and said corporation shall forfeit its right to do business in this state, in addition to the other penalties prescribed in this Act.'

If this must needs be construed to mean that for non-payment of the franchise tax a foreign railroad corporation engaged in business as a common carrier of intrastate and interstate commerce is to forfeit its right to do business in the state, not only with respect to intrastate but also with respect to interstate commerce, the effect would be to impose a condition upon its right to transact interstate commerce, and the act would be invalid as amounting in effect to a regulation of that commerce; unless, indeed, Paragraph 20 would be treated as separable."

See also *Underwood* v. *Chamberlain*, 254 U. S. 119.

In *Postal Telegraph Co.* v. *Adams*, 155 U. S. 685, at page 689, this Court, in recognizing the State's right to impose taxes on property, makes this proviso:

> "If payment is not made a condition to carry on its business, but its enforcement is left to ordinary means."

B.

The acceptance of the provisions of Part I by plaintiff's agent does not impose a liability for this tax where none existed before.

It involves the waiver of an immunity and right derived from and guaranteed by the Constitution of the United States.

The signature of this acceptance involves the waiver of the plaintiff's right to be immune from said taxation of its interstate traffic, which immunity it enjoys by reason

of the matters considered under the preceding points of this brief.

A State has no right to demand the waiver of any right or immunity guaranteed by the Constitution of the United States as a condition of itself granting a privilege, immunity or license.

(a) It cannot demand a waiver of the constitutional guaranty of due process of law or of the equal protection of the laws.

Frost v. *California*, Law. Ed. Advance Sheets, U. S. Supreme Court, decided June 7, 1926.

(b) It cannot demand a waiver of the right to remove a case from the State courts to the Federal courts.

(c) A State cannot demand a waiver of the constitutional exemption of interstate commerce from State taxation.

Western Union Telegraph Co. v. *Kansas*, 216 U. S. 1.

It cannot require a surrender of private property for public use without just compensation as a condition of granting such privilege.

Frost v. *California*, *supra*.

All the foregoing cases involve the surrender of some right or immunity guaranteed by the United States Constitution as a condition of the State granting a privilege or immunity, which it was assumed it could absolutely withhold, had it seen fit, but which the Supreme Court of the United States has held (if granted at all) was granted free of the unconstitutional condition or waiver required.

C.

The purpose of Congress in granting Federal aid to the States in the construction of their highways is that such highways shall be open to interstate commerce.

The Highway Commissioner of Connecticut, acting in its behalf under proper legislation, has accepted from the Federal Government aid in construction of its highways (R. 25).

> "Federal aid legislation is of significance, not because of the aid given by the United States for the construction of particular highways, but because those acts make clear the purpose of Congress that State highways shall be open to interstate commerce."
>
> *Bush & Sons* v. *Maloy*, 267 U. S. 317.

Can State highways be said to be open to interstate commerce if they can only be used on payment of a charge not imposed on any other kind of traffic?

In neither *Hendrick* v. *Maryland* nor *Kane* v. *New Jersey*, *supra*, was there any question of Federal aid involved. The question here, apart from the question of discrimination, is whether the State, after accepting Federal aid in the construction of its highways, can exclude from such highways the particular traffic which Federal aid is intended to foster and promote. Has it not to that extent surrendered the proprietorship on which it bases its right to a toll, and does not its highways become national highways to that extent?

Is not one of the purposes, if not the chief purpose, of Federal aid to compensate the States for such use as interstate traffic makes of State highways?

The Act authorizing Federal aid to the States in the construction and maintenance of highways, in its enacting clause, provides:

"That this act may be cited as the Federal Highway Act. 42 Statutes at Large—212. Approved November 9, 1921."

Examination of the various sections of the Act forces the conclusion that the foregoing questions can only be answered in the affirmative. For instance, Section 6 is as follows:

"That in approving projects to receive Federal aid under the provisions of this act the Secretary of Agriculture shall give preference to such projects as will expedite the completion of an adequate and connected system of highways interstate in character. * * *

Highways which may receive Federal aid shall be divided into two classes, one of which shall be known as primary or interstate highways, and shall not exceed three-sevenths of the total mileage which may receive Federal aid, and the other of which shall connect or correlate therewith and be known as secondary or intercounty highways, and shall consist of the remainder of the mileage which may receive Federal aid.

The Secretary of Agriculture shall have authority to approve in whole or in part the systems as designated or to require modifications or revisions thereof: *Provided*, That the States shall submit to the Secretary of Agriculture for his approval any proposed revisions of the designated systems of highways above provided for.

Not more than 60 per centum of all Federal aid allotted to any State shall be expended upon the primary or interstate highways until provision has been made for the improvement of the entire system of such highways: *Provided*, That with the approval of any State highway department the Secretary of Agriculture may approve the expenditure of more than 60 per centum of the Federal aid apportioned to such State upon the primary or interstate highways in such State.

> The Secretary of Agriculture may approve projects submitted by the State highway departments prior to the selection, designation, and approval of the system of Federal-aid highways herein provided for if he may reasonably anticipate that such projects will become a part of such system.
>
> Whenever provision has been made by any State for the completion and maintenance of a system of primary or interstate and secondary or intercounty highways equal to 7 per centum of the total mileage of such State, as required by this act, said State, through its State highway department, by and with the approval of the Secretary of Agriculture, is hereby authorized to add to the mileage of primary or interstate and secondary or intercounty systems as funds become available for the construction and maintenance of such additional mileage."

From the foregoing it appears that only primary or interstate highways, or secondary highways connecting therewith, are to receive aid from the Federal Government.

It further appears that when the present system of interstate highways, and secondary highways, or highways connected with interstate highways, are complete, additional mileage of the same class of highways may be provided for.

Section 8 of the Act provides for the approval by the Secretary of Agriculture of the type, width and character of improvement, repair and maintenance in each case.

Section 9 provides

> "that all highways constructed or reconstructed under the provisions of this act shall be free from tolls of all kinds."

Section 12 provides that construction and reconstruction work are subject to inspection and approval, and in accordance with rules and regulations promulgated by the Secretary of Agriculture.

Section 14 provides that highways receiving Federal aid, and not placed in proper condition of maintenance by the States, shall be taken charge of by the Secretary of Agriculture, who shall "proceed immediately to have such highway placed in a proper condition of maintenance," etc.

That the State receives full compensation from the Federal Government for the use made by interstate busses over and beyond the compensation paid by the operators may be assumed from the fact that Federal aid to Connecticut highways for the period in question here is $1,083,451.72 out of a total expenditure of $19,477,696.84 or over 5½ per cent. of the total cost (R. 24-26), whereas the interstate operators number 91, as against a total of public service operators numbering 3,046 (R. 32) or less than 3 per cent.

POINT V.

The District Court erred in refusing plaintiff an injunction restraining the enforcement of the provisions of Chapter 254 of the Laws of 1925, Part II thereof, and enjoining the suspension of registration of complainant's motor vehicles, and arresting and prosecution of plaintiff's agents and employees.

Ex parte Young, 209 U. S. 145.
Atchison Railroad v. *O'Connor*, 223 U. S. 286.
Stafford v. *Wallace*, 258 U. S. 512.
Wilson v. *Illinois Southern Ry. Co.*, 263 U. S. 574.
Raymond v. *Chicago*, 207 U. S. 20.
Terrace v. *Thompson*, 263 U. S. 197.
Hill v. *Wallace*, 259 U. S. 62.

State of Connecticut v. *City of Hartford*, 50 Conn. 90.

Cotting v. *Kansas City Stock Yards Co.*, 183 U. S. 100.

The foregoing are all cases in which the right to an injunction to prevent arrests and prosecutions was sustained, where invasion of some property right was involved.

We contend here, on the authority of the cases cited above and under Points III and IV, that the suspension of plaintiff's registrations, and the arrest of its drivers, should be enjoined, even though it should ultimately be determined that this tax was a valid non-discriminatory burden.

Even though the charge of one cent a mile be authorized, the method by which it is proposed to enforce payment obstructs and embarrasses interstate commerce.

A further reason why equity should intervene is that, as we have seen, under Part II of Chapter 254 of the Laws of 1925, the tax is required to be paid to the State Treasurer. After such tax money is once in the treasury of the State of Connecticut, the law of Connecticut affords no remedy that counsel has been able to find for its recovery, however illegal it may be.

State of Connecticut v. *Hartford*, 50 Conn. 90.

POINT VI.

The Court erred in the exclusion of the testimony of the witness Alfred De Maris, offered for the purpose of showing the proportion of registration fees which are applied to the maintenance and construction of Connecticut highways, to which ruling plaintiff duly excepted.

The purpose of this testimony was to show that the registration fee in Connecticut was not, as in some States, little more than a mere license fee, intended to cover the cost of inspection and administration (R. 33).

It was intended to show that, out of an average charge of $18.69 on all automobiles, and an average of $100 on plaintiff's busses, the cost of administration was only $1.91 per vehicle, the balance going to highway construction and maintenance.

All of which is respectfully submitted.

EDWARD H. KELLY,
Solicitor and Counsel for the Plaintiff,
Interstate Busses Corporation,
75 Pearl Street, Hartford, Connecticut.

APPENDIX A.

House Bill 1047—Chapter 254.

AN ACT PROVIDING AN EXCISE ON THE USE OF PUBLIC HIGHWAYS BY PUBLIC SERVICE MOTOR BUSSES.

PART I.

TERM "COMPANY" DEFINED.

SECTION 1. The word "company" as used in this act shall be construed to mean any individual who, or co-partnership, corporation or association of individuals which shall engage in the business of carrying passengers for hire over the highways of this state in motor busses between fixed termini both of which are situated in this state.

TO PAY EXCISE FEE FOR USE OF HIGHWAYS. AMOUNT, HOW DETERMINED.

SECTION 2. Each company shall pay an excise fee for the use of the highways of the state upon its entire gross receipts from the conveyances operated by it within this state. For the purpose of the determination of the amount to be paid, each such company shall, on or before the thirty-first day of March in each year, return to the tax commissioner, on forms to be prescribed by him, a statement under oath of the owner of such business if the same is individually owned, and if otherwise owned, then such statement shall be returned by the treasurer of such company or the custodian of its funds or its duly authorized agent or officer, specifying: Its address and location within this state; the name and location within this state

of the person upon whom service of process may be had against such company; the total amount of gross receipts from all sources from the lines or routes operated in the taxing period ended December thirty-first of the year preceding or for such lesser time than one year as such operation shall have continued; the amount of tax assessed and paid by it on real estate standing in its name during the last completed taxing period next preceding the date of such report; and such other information as may be required by the tax commissioner to accurately compute the amount of the excise imposed by the provisions of this act.

Amount of Excise.

Section 3. The amount of the excise to be annually paid shall equal three per centum of the gross receipts of such company from such operations for the period covered by each such report less the amount of taxes paid in any town in this state on the real and tangible personal estate of such company, which estate was assessed in its name on the tax date next but one preceding the filing of its return and which was used in whole or in part in the conduct of such business, but, if such real or tangible personal estate was in part used in such business by the company, only an equitable portion of such tax, as determined by the tax commissioner, based on the relative value of the space so used, shall be so deducted.

Board of Equalization to Determine Amount Annually.

Section 4. The board of equalization shall annually determine the amount of such gross receipts of every such company for the year ended December thirty-first next preceding or for such lesser time as such company may have carried on such business. The tax commissioner

shall notify each company of the amount of such deduction and the amount of its excise fee on or before June tenth following. Any taxpayer, claiming to be aggrieved by the action of such board with respect to the amount of any deduction allowed or with respect to the amount of the excise shall, within ten days from the date of such notice, give notice to said board in writing of such grievance. Said board shall designate the time when and place where such aggrieved company may be heard thereon. After such hearing, said board shall finally determine the amount of such gross earnings, deductions and excise and shall give final notice thereof, in writing, to the company.

EXCISE—WHEN PAYABLE.

SECTION 5. The board of equalization within the first ten days of July in each year, shall prepare a list showing the name and address of each such company and the amount of gross earnings and separately the amount of allowable deductions as fixed pursuant to the provisions of this act, and shall enter the amount of the excise opposite the name of each such company and shall certify to the correctness of such list and deliver the same to the treasurer of the state. Failure to receive any notice required to be given by the provisions of Part I of this act shall not be construed to relieve the company from payment of the excise hereby imposed. The amount of such excise less the amount of lawful deductions shall be payable to the treasurer on the fifteenth day of July next succeeding the date of the mailing of final notice thereof. All amounts which shall become due to the state by authority of the provisions of Part I of this act shall be a lien on all property or interest therein of the company until the same shall be paid, and each such lien shall take precedence over all other encumbrances except taxes payable on real estate to the town wherein the same is situ-

ated. If the amount of any such excise shall not be paid on or before the twenty-fifth day of July next following the date of final notice thereof, the same shall bear interest from the fifteenth day of said month at the rate of seven per centum per annum until paid if payment shall be made before the commencement of legal proceedings for the recovery of the same, but at the rate of ten per centum per annum if payment shall be made after the commencement of such proceedings. The proceeds derived from the administration of Part I hereof shall be expended by the highway commissioner for the maintenance and reconstruction of trunk line highways without specific appropriation thereof by the general assembly.

EXCISE TO BE IN LIEU OF TAXES.

SECTION 6. The excise imposed by the provisions of Part I of this act shall be in lieu of all other taxes upon the intangible personal property exclusively owned, leased or used by such company in the conduct of such business, and of its rights, franchises, funded and floating debt, money and credits, accounts and bills receivable and shares of stock of any such company organized in this state, but the provisions hereof shall not be construed as exempting any company from complying with the provisions of the law relating to the fees payable to the motor vehicle commissioner for the licensing or registration of motor vehicles, and all busses employed in the business of any such company shall be subject to the statutes of this state pertaining to the operation, control and use of such vehicles upon the public highways.

POWERS OF THE BOARD OF EQUALIZATION.

SECTION 7. The board of equalization may exercise all the powers conferred upon it in the administration of the

provisions of this act which are conferred upon said board by the provisions of section 1387 of the general statutes. Any person or company failing to make returns as required by the provisions of Part I hereof shall be subject to the provisions of section 1388 of the general statutes. Any money due to the state by authority of the provisions of Part I of this act may be collected in the manner provided in section 1389 of the general statutes. No company subject to the provisions of Part I of this act shall be subject to the provisions of chapter 73 of the general statutes as amended.

PART II.

Owners of Interstate Operated Vehicles to File Statement with Commissioner.

Section 1. The owner of each motor vehicle which is operated over any highway in the state for the purpose of carrying passengers from a point outside the state to another point outside the state, from a point outside the state to a point within the state or from a point within the state to a point outside the state, shall, annually, on or before the thirty-first day of March, file with the tax commissioner, on blanks to be prescribed by him, a sworn statement of the name and address of such owner, the number of miles of highway in the state over which such motor vehicle shall have been operated during the year ending the thirty-first day of the last preceding December and such other information as said commissioner shall require, and shall pay to the treasurer, as an excise on the use of such highway, one cent for each mile so used.

Acceptance of Provisions of Act.

Section 2. Within thirty days from the passage of this act, the motor vehicle commissioner shall send, by regis-

tered mail, postage prepaid, a notice of the provisions of Part II hereof, to the owner of each motor vehicle operating as described in section one of said Part II and registered under the provisions of the general statutes concerning registration of public service motor vehicles. On or before the first day of August, 1925, the owner of each such motor vehicle shall file with the commissioner of motor vehicles a statement of his acceptance of the provisions of said Part II.

SUSPENSION OF LICENSE.

SECTION 3. The commissioner of motor vehicles shall suspend the registration of any motor vehicle whose owner shall be subject to the provisions of Part II hereof and shall fail to comply therewith, during the period for which such failure shall continue.

PROCEEDS TO BE EXPENDED FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAYS.

SECTION 4. The proceeds derived from the administration of Part II hereof shall be expended in the manner provided in section five of Part I for the proceeds of said Part I.

ADJUDGING PORTION OF ACT INVALID NOT TO AFFECT VALIDITY OF ANY OTHER PORTION HEREOF.

SECTION 5. The adjudging of any portion of this act to be invalid shall not affect the validity of any other portion hereof.

Approved June 24, 1925.

APPENDIX B.

Motor Vehicle Law, Chapter 400, Public Acts of 1921, Section 22, Subdivision (c), providing for collection of registration fees on public service motor vehicles; and Subdivision (u), providing for their application as compensation for privilege of using the highways, and to reimburse the State for injury to same.

(c) For the registration of each public service motor vehicle other than a jitney, with a seating capacity of seven or less, the commissioner shall compute the fee based upon the total piston displacement or the carrying capacity or, if such motor vehicle shall be driven by steam or electricity, the horse power; and shall charge for such registration the sum of fifteen dollars plus the highest fee of the three so computed. When the seating capacity of such motor vehicle shall be in excess of seven and not above twenty, there shall be added to the fee hereinbefore provided the sum of two dollars for each seat so in excess; when the seating capacity of such motor vehicle shall be in excess of twenty and not above forty there shall be added to the fee hereinbefore provided the sum of five dollars for each seat so in excess; and for each seat which shall be in excess of forty, there shall be added to the fee hereinbefore provided the sum of ten dollars.

(u) All fees provided for in this act shall be construed to be license fees imposed for the administration of this act and as compensation for the privilege of using the highways of this state and to reimburse the state in whole or in part for injury done to the highways by the operation of motor vehicles.

APPENDIX C.

Chapter 145, Public Acts of 1925—Sections 4 and 6—providing a tax of two cents per gallon on gasoline, and its application to maintenance of highways.

SEC. 4. Each distributor shall, on or before the fifteenth day of each month, render a report to the commissioner of motor vehicles, which shall state the number of gallons of such fuel sold or used in the state by him during the preceding calendar month, on forms to be furnished by said commissioner of motor vehicles, and such report shall contain such further information as the commissioner of motor vehicles shall prescribe. On or before the first day of the calendar month succeeding the filing of such report, each distributor shall pay to the treasurer of the state a tax of two cents per gallon upon each gallon so reported, provided all fuels sold to any retailer for resale or use for motor boats shall be exempt from the payment of such tax upon satisfactory evidence to the commissioner of motor vehicles that all such fuels are intended for and will be used only for the propelling of motor boats. On or before the first day of each calendar month the commissioner of motor vehicles shall transmit to the treasurer of the state such information as shall show all taxes due from each distributor under the provisions of this act.

SEC. 6. All money paid to the treasurer of the state under the provisions of section four hereof shall be expended under the direction of the highway commissioner for the construction, maintenance or reconstruction of state highways, without specific appropriation by the general assembly for such purpose.

APPENDIX D.

Chapter 73 of General Statutes of Connecticut—Miscellaneous Corporations.

SEC. 1391. *"Company" defined.* The term "company" as used in this chapter shall include every corporation, joint stock company or association carrying on business in this state which is required to report to the collector of internal revenue for the district in which such company has its principal place of business for the purpose of the

APPENDIX D.

Chapter 73 of General Statutes of Connecticut—Miscellaneous Corporations.

SEC. 1401. State Tax to be in Lieu of all other Taxes except Tax on Increased Capital Stock. The tax computed upon the net income of companies as provided in this chapter shall be in lieu of all taxes which otherwise would be laid on moneys, and credits, including accounts and bills receivable, owned by such companies, and shall be in lieu of all other taxes upon the franchises of the domestic corporations included in the companies defined in this chapter, except the tax on capital stock provided by Section 3506 and shall be in lieu of all other taxes on the privilege of doing business within this state upon the foreign corporations included in the companies defined in this chapter.

APPENDIX E.

Section 1389 of the General Laws.

SEC. 1389. *Proceedings for collection in cases of non-payment of tax.* If the tax provided for in this part is not paid within ten days after the same becomes due, the treasurer shall apply to the superior court by complaint in the nature of a petition in equity, setting forth the non-payment of such tax and describing the property and choses in action of such company and the name of the agent or officer of such company subscribing the return or reports required to be made by this part, and the names of the persons filling said offices; and the court shall appoint a time for hearing and cause reasonable notice thereof to be given to the adverse party, and at the time and place designated in such notice shall hear the parties.

APPENDIX F.

Chapter 400 of the Laws of 1921 as amended by Chapter 257 of the Laws of 1923, Section 8.

SEC. 8. Section thirty-four of said act is amended to read as follows: No person to whom an operator's license shall have been refused, or whose operator's license or whose right to operate a motor vehicle in this state shall have been suspended or revoked, shall operate any motor vehicle during the period of such refusal, suspension or revocation. No person shall operate or cause to be operated any motor vehicle, the registration of which shall have been refused, suspended or revoked, or any motor vehicle, the right to operate which shall have been suspended or revoked. Any person who shall violate any provision of this section shall be fined not less than one hundred nor more than two hundred dollars or imprisoned not more than ninety days or both.

(27)

Office Supreme Court, U. S.
FILED
OCT 3 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

INTERSTATE BUSSES CORPORATION,
Appellant,

vs.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut; ERNEST R. HOOKER, Treasurer of the State of Connecticut; FREDERICK M. SALMON, Comptroller of the State of Connecticut; ROBBINS B. STOECKEL, Commissioner of Motor Vehicles of the State of Connecticut, and ROBERT T. HURLEY, Superintendent of Police of the State of Connecticut,
Respondents.

In Equity
197.

MOTION TO ADVANCE CAUSE.

EDWARD H. KELLY,
Solicitor and Counsel for Appellants,
No. 75 Pearl Street,
Hartford, Connecticut.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

INTERSTATE BUSSES CORPORATION, Appellant, *vs.* WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut; ERNEST E. ROGERS, Treasurer of the State of Connecticut; FREDERICK M. SALMON, Comptroller of the State of Connecticut; ROBBINS B. STOECKEL, Commissioner of Motor Vehicles of the State of Connecticut, and ROBERT T. HURLEY, Superintendent of Police of the State of Connecticut, Respondents.	In Equity 197.

MOTION TO ADVANCE CAUSE.

The above named appellant, by Edward H. Kelly, its counsel, moves that the hearing on the above entitled cause on the merits be advanced, and for reason therefor, shows the Court as follows:

This is an appeal pursuant to the provisions of Section 238 of the Judicial Code as amended by Act of February 13, 1925, from a judgment and decree of the United States District Court for the District of Connecticut, in equity.

The suit involves the constitutionality of Chapter 254 of the Laws of 1925, enacted in the 1925 Session of the Connecticut Legislature and becoming operative on July 1st of that year.

The matter was first before the Court, constituted of three Judges, on an application for a temporary injunction. It was again before the Court on the merits in January, 1927.

The application for a temporary injunction was denied, and on the hearing on the merits the bill dismissed.

The prayer of the bill is for a temporary and permanent injunction restraining as to it the enforcement of the above mentioned Chapter 254 of the Laws of 1925. By that enactment, Part II thereof, copy of which is annexed as an appendix hereto, the Legislature provided for the imposition of an excise of one cent per mile on persons operating motor vehicles over Connecticut highways for the carriage of passengers in interstate commerce.

Part I thereof imposes upon operators of motor vehicles carrying passengers intrastate, a tax of 3 per cent. of the amount of the gross receipts from such business.

Said local operators, by the terms of Part I, Sections 6 and 7 of the Act (see Appendix), were exempted from all other forms of taxation. No such exemption was granted to the interstate operator, and appellant's contention is that this constitutes discrimination against interstate commerce.

The transcript of the record on appeal has been filed with the Clerk of this Court and the record printed. Further facts appear therein.

It is respectfully submitted, since the recent advent of motor bus transportation, and the enactment of legislation by the different States seeking to regulate such transportation and to impose taxes and charges thereon for the purpose of highway construction and maintenance, the

question here presented is of general public interest throughout the country.

Other States are following Connecticut in enacting legislation seeking to impose upon interstate transportation by motor bus a mileage tax for the maintenance and upkeep of their highways and, like Connecticut, exempting from its operation the local operator. The question is therefore one of great public interest, concerning, as it does, the extent of the State's power in reimbursing itself for expenses incurred in the construction and maintenance of highways.

WHEREFORE, appellant prays that this cause be advanced for hearing.

INTERSTATE BUSSES CORPORATION,
Appellant,

By EDWARD H. KELLY,
Solicitor and Counsel.

UNITED STATES OF AMERICA,
DISTRICT OF CONNECTICUT, } ss.:

I, EDWARD H. KELLY, being duly sworn, on oath depose and say: I am general counsel for the appellant above named and, as such, have knowledge of the facts contained in the foregoing motion; that I have read the foregoing motion, and the facts therein stated are true.

EDWARD H. KELLY.

Subscribed to and sworn to this
30th day of September, 1927, before me,

(Seal) Anna D. Birmingham
Notary Public.

IT IS HEREBY CONSENTED, subject to the Court's approval, that the foregoing motion that this cause be advanced may be granted.

BENJAMIN W. ALLING,
Attorney General of the State of Connecticut.

APPENDIX.

HOUSE BILL 1047—CHAPTER 254.

AN ACT PROVIDING AN EXCISE ON THE USE OF PUBLIC HIGHWAYS BY PUBLIC SERVICE MOTOR BUSSES.

PART I.

TERM "COMPANY" DEFINED.

Section 1. The word "company" as used in this act shall be construed to mean any individual who, or co-partnership, corporation or association of individuals which shall engage in the business of carrying passengers for hire over the highways of this state in motor busses between fixed termini both of which are situated in this state.

TO PAY EXCISE FEE FOR USE OF HIGHWAYS. AMOUNT, HOW DETERMINED.

Section 2. Each company shall pay an excise fee for the use of the highways of the state upon its entire gross receipts from the conveyances operated by it within this state. For the purpose of the determination of the amount to be paid, each such company shall, on or before the thirty-first day of March in each year, return to the tax commissioner, on forms to be prescribed by him, a statement under oath of the owner of such business if the same is individually owned, and if otherwise owned, then such

statement shall be returned by the treasurer of such company or the custodian of its funds or its duly authorized agent or officer, specifying: Its address and location within this state; the name and location within this state of the person upon whom service of process may be had against such company; the total amount of gross receipts from all sources from the lines or routes operated in the taxing period ended December thirty-first of the year preceding or for such lesser time than one year as such operation shall have continued; the amount of tax assessed and paid by it on real estate standing in its name during the last completed taxing period next preceding the date of such report; and such other information as may be required by the tax commissioner to accurately compute the amount of the excise imposed by the provisions of this act.

Amount of Excise.

Section 3. The amount of the excise to be annually paid shall equal three per centum of the gross receipts of such company from such operations for the period covered by each such report less the amount of taxes paid in any town in this state on the real and tangible personal estate of such company, which estate was assessed in its name on the tax date next but one preceding the filing of its return and which was used in whole or in part in the conduct of such business, but, if such real or tangible personal estate was in part used in such business by the company, only an equitable portion of such tax, as determined by the tax commissioner, based on the relative value of the space so used, shall be so deducted.

Board of Equalization to Determine Amount Annually.

Section 4. The board of equalization shall annually determine the amount of such gross receipts of every such company for the year ended December thirty-first next preceding or for such lesser time as such company may

have carried on such business. The tax commissioner shall notify each company of the amount of such deduction and the amount of its excise fee on or before June tenth following. Any taxpayer, claiming to be aggrieved by the action of such board with respect to the amount of any deduction allowed or with respect to the amount of the excise shall, within ten days from the date of such notice, give notice to said board in writing of such grievance. Said board shall designate the time when and place where such aggrieved company may be heard thereon. After such hearing, said board shall finally determine the amount of such gross earnings, deductions and excise and shall give final notice thereof, in writing, to the company.

EXCISE—WHEN PAYABLE.

Section 5. The board of equalization within the first ten days of July in each year, shall prepare a list showing the name and address of each such company and the amount of gross earnings and separately the amount of allowable deductions as fixed pursuant to the provisions of this act, and shall enter the amount of the excise opposite the name of each such company and shall certify to the correctness of such list and deliver the same to the treasurer of the state. Failure to receive any notice required to be given by the provisions of Part I of this act shall not be construed to relieve the company from payment of the excise hereby imposed. The amount of such excise less the amount of lawful deductions shall be payable to the treasurer on the fifteenth day of July next succeeding the date of the mailing of final notice thereof. All amounts which shall become due to the state by authority of the provisions of Part I of this act shall be a lien on all property or interest therein of the company until the same shall be paid, and each such lien shall take precedence over all other encumbrances except taxes pay-

able on real estate to the town wherein the same is situated. If the amount of any such excise shall not be paid on or before the twenty-fifth day of July next following the date of final notice thereof, the same shall bear interest from the fifteenth day of said month at the rate of seven per centum per annum until paid if payment shall be made before the commencement of legal proceedings for the recovery of the same, but at the rate of ten per centum per annum if payment shall be made after the commencement of such proceedings. The proceeds derived from the administration of Part I hereof shall be expended by the highway commissioner for the maintenance and reconstruction of trunk line highways without specific appropriation thereof by the general assembly.

EXCISE TO BE IN LIEU OF TAXES.

Section 6. The excise imposed by the provisions of Part I of this act shall be in lieu of all other taxes upon the intangible personal property exclusively owned, leased or used by such company in the conduct of such business, and of its rights, franchises, funded and floating debt, money and credits, accounts and bills receivable and shares of stock of any such company organized in this state, but the provisions hereof shall not be construed as exempting any company from complying with the provisions of the law relating to the fees payable to the motor vehicle commissioner for the licensing or registration of motor vehicles, and all busses employed in the business of any such company shall be subject to the statutes of this state pertaining to the operation, control and use of such vehicles upon the public highways.

POWERS OF THE BOARD OF EQUALIZATION.

Section 7. The board of equalization may exercise all the powers conferred upon it in the administration of the

provisions of this act which are conferred upon said board by the provisions of section 1387 of the general statutes. Any person or company failing to make returns as required by the provisions of Part I hereof shall be subject to the provisions of section 1388 of the general statutes. Any money due to the state by authority of the provisions of Part I of this act may be collected in the manner provided in section 1389 of the general statutes. No company subject to the provisions of Part I of this act shall be subject to the provisions of chapter 73 of the general statutes as amended.

PART II.

Owners of Interstate Operated Vehicles to File Statement with Commissioner.

Section 1. The owner of each motor vehicle which is operated over any highway in the state for the purpose of carrying passengers from a point outside the state to another point outside the state, from a point outside the state to a point within the state or from a point within the state to a point outside the state, shall, annually, on or before the thirty-first day of March, file with the tax commissioner, on blanks to be prescribed by him, a sworn statement of the name and address of such owner, the number of miles of highway in the state over which such motor vehicle shall have been operated during the year ending the thirty-first day of the last preceding December and such other information as said commissioner shall require, and shall pay to the treasurer, as an excise on the use of such highway, one cent for each mile so used.

ACCEPTANCE OF PROVISIONS OF ACT.

Section 2. Within thirty days from the passage of this act, the motor vehicle commissioner shall send, by registered mail, postage prepaid, a notice of the provisions of Part II hereof, to the owner of each motor vehicle operating as described in section one of said Part II and registered under the provisions of the general statutes concerning registration of public service motor vehicles. On or before the first day of August, 1925, the owner of each such motor vehicle shall file with the commissioner of motor vehicles a statement of his acceptance of the provisions of said Part II.

SUSPENSION OF LICENSE.

Section 3. The commissioner of motor vehicles shall suspend the registration of any motor vehicle whose owner shall be subject to the provisions of Part II hereof and shall fail to comply therewith, during the period for which such failure shall continue.

PROCEEDS TO BE EXPENDED FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAYS.

Section 4. The proceeds derived from the administration of Part II hereof shall be expended in the manner provided in section five of Part I for the proceeds of said Part I.

ADJUDGING PORTION OF ACT INVALID NOT TO AFFECT VALIDITY OF ANY OTHER PORTION HEREOF.

Section 5. The adjudging of any portion of this act to be invalid shall not affect the validity of any other portion hereof.

Approved June 24, 1925.

FILED
DEC 17 1927

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

IN EQUITY—No. 197.

INTERSTATE BURGESS CORPORATION,

Appellant,

vs.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut; ERNEST E. ROGERS, Treasurer of the State of Connecticut; FREDERICK M. SALMON, Comptroller of the State of Connecticut; ROBBINS B. STOEBCEL, Commissioner of Motor Vehicles of the State of Connecticut, and ROBERT T. HURLEY, Superintendent of Police of the State of Connecticut,

Appellees.

BRIEF FOR APPELLEES.

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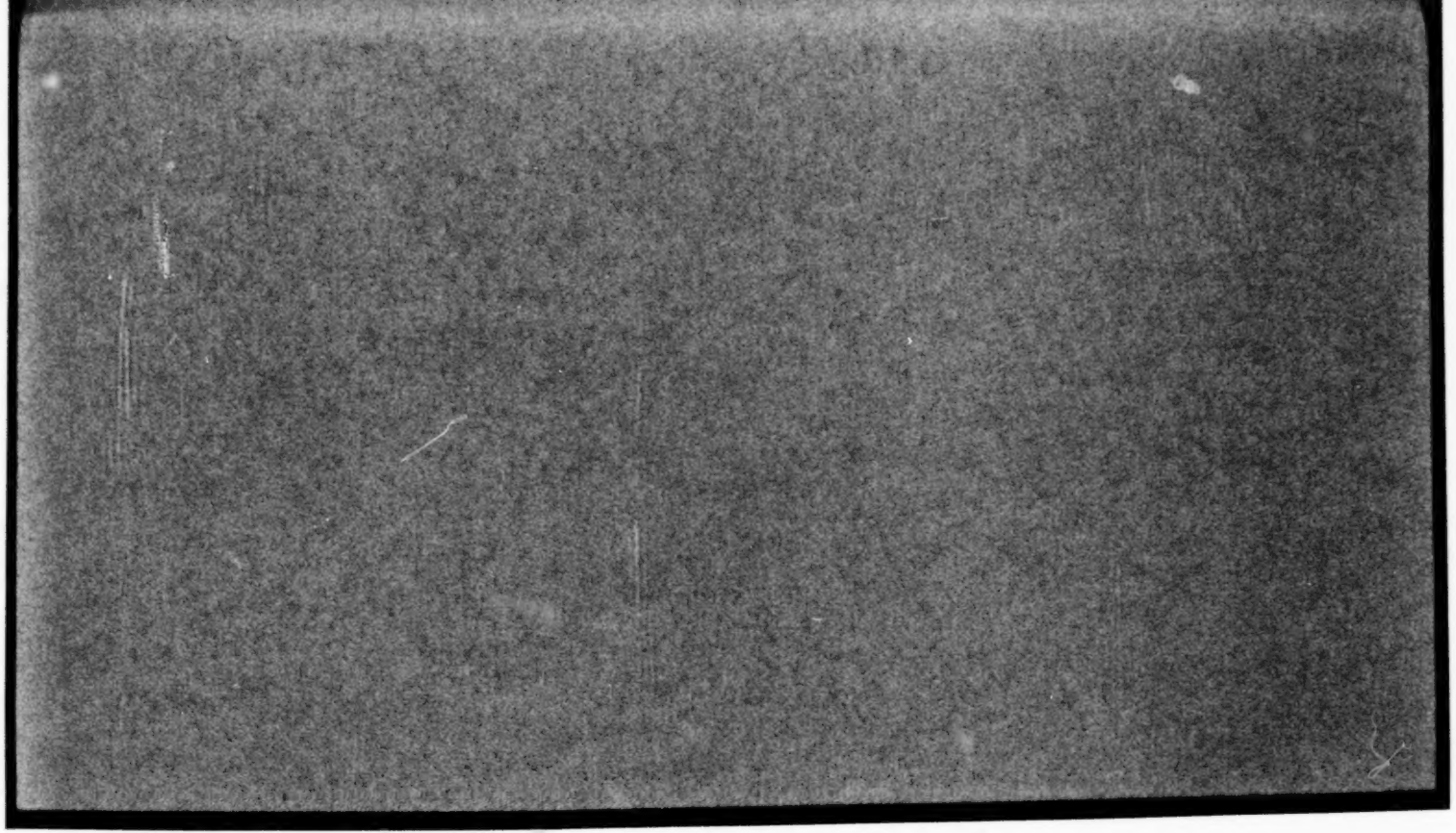

TABLE OF CONTENTS.

PAGE

STATEMENT 1

POINT 1—The tax in question is a charge for the privilege of using the roads of the State of Connecticut; and when imposed upon those using the roads in interstate commerce, does not thereby offend the Commerce Clause of the Constitution of the United States..... 4

POINT 2—The statute before the Court does not effect an unlawful discrimination against interstate commerce on account of the difference in the basis of tax upon intrastate and interstate carriers, or on account of granting to the former carriers credits and exemptions not given to the latter.. 6

POINT 3—The statute does not create an unconstitutional discrimination against interstate commerce, because of the difference in remedies for collection of the tax..... 17

POINT 4—There is no violation of the Commerce Clause on the ground that non-payment of the tax may result in the suspension of registration of motor vehicles engaged in interstate commerce 18

POINT 5—Even though the suspension of registration feature of Section 3, Part II, be regarded as violating the Commerce Clause, the rest of the statute is, nevertheless, unaffected..... 19

PAGE

POINT 6—The Connecticut statute is not invalidated as a violation of the Commerce Clause, because of the Federal post road acts: Rev. Stat. at L., Sec. 3964; U. S. C., title 39, Sec. 481; Act of March 1, 1884, Chap. 9; 23 Stat. at L. 3; U. S. C., title 39, Sec. 482, or the Act of July 11, 1916, Chap. 241; 39 Stat. at L. 355; the amendment thereto of February 28, 1919, Chap. 69; 40 Stat. at L. 1189, 1200, or the Federal Highway Act of November 9, 1921, Chap. 119; 42 Stat. at L. 212; U. S. C., title 23, Sec. 1..... 20

POINT 7—The Court did not err in excluding the testimony of the witness De Maris..... 21

APPENDIX A—Chapter 400 of Public Acts of Connecticut of 1921, as amended by Chapters 257 and 280 of the Public Acts of 1923, and by Chapters 195 and 235 of the Public Acts of 1925—Part III, Licenses..... 23

APPENDIX B—Chapter 77, Public Acts 1921—An Act Concerning Public Service Motor Vehicle Operating Over Fixed Routes..... 50

APPENDIX C—Chapter 54, Public Acts 1925—An Act Concerning a Uniform System of Accounts and Reports of Jitney Operations..... 53

TABLE OF CASES CITED.

PAGE

Berry, Automobiles (5th Ed.), Sec. 101, pp. 81-83... 9
Buck v. Kuykendall, 267 U. S. 307; 38 A. L. R. 286.. 10

Camas Stage Co. v. Kozer, 104 Ore. 609; 209 Pac. 95; 25 A. L. R. 27..... 8, 9
Clark v. Poor, 71 L. Ed. (U. S.) 776; 47 Sup. Ct. Rep. (Adv. Sheets) 702..... 4, 5
Cooley on Taxation (4th Ed.), Pars. 395, 397, pp. 862-873 .....6, 13, 14, 15
C. J. 12, Constitutional Law, Sec. 177, pp. 760-764. 7
C. J. 37, Licenses, Sec. 9, pp. 171-172; Sec. 64 (3), pp. 211-212 14

Dohs v. Holm, 152 Minn. 529; 189 N. W. 418..... 8
Dorchy v. Kansas, 264 U. S. 286, 289-290..... 19

Fisher Bros. v. Brown, 111 Ohio State 602; 146 N. E. 100 8

General Statutes of Connecticut, 1918, Chap. 72..... 12
Geo. W. Bush & Sons Co. v. Maloy et al., 267 U. S. 317 .....10, 21

Hendrick v. Maryland, 235 U. S. 610.....4, 5, 7, 18
Hess v. Pawloski, 274 U. S. (Adv. Sheets) 352....12, 18
Hoffert, In re, 34 S. D. 271; 148 N. W. 20; 52 L. R. A. (N. S.) 949..... 8

Interstate Busses Corp. v. Holyoke St. Ry. Co., 273 U. S. (Adv. Sheets) 45, 51..... 7

Jasnowski v. Dilworth, 191 Mich. 287; 157 N. W. 891 ..... 8, 9

PAGE

Kane v. New Jersey, 242 U. S. 160.....4, 5, 8, 9, 18, 19

Liberty Highway Co. v. Michigan P. U. Commission, 294 Fed. 703, 708-709..... 21
Lillard v. Melton, 103 S. C. 10; 87 S. E. 421..... 9

Morris v. Duby, 274 U. S. (Adv. Sheets) 135, 143-145.....20, 21

Opinion of the Justices, 250 Mass. 591; 148 N. E. Rep. 889..... 5, 8

Public Acts of Connecticut, 1921, Chap. 77 (Appendix B)..... 10

Raymond v. Holm, 206 N. W. (Minn.) 166..... 8
R. C. L., 6, pp. 121-125, Secs. 121-122..... 19

Schuler, Ex parte, 167 Calif. 282; 139 Pac. 685, 690. 8
State v. Kozer, 242 Pac. (Ore.) 621..... 8
State v. N. H. & H. R. R. Co., 60 Conn. 326, 333-334; 22 Atl. 765..... 17
State v. Travelers Ins. Co., 73 Conn. 255..... 14
State v. Oligny, 202 N. W. (Minn.) 893..... 21

Westfalls etc. Co. v. Chicago, 280 Ill. 318; 117 N. E. 439..... 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

INTERSTATE BUSSES CORPORATION, Appellant, vs. WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut; ERNEST E. ROGERS, Treasurer of the State of Connecticut; FREDERICK M. SALMON, Comptroller of the State of Connecticut; ROBBINS B. STOECKEL, Commissioner of Motor Vehicles of the State of Connecticut, and ROBERT T. HURLEY, Superintendent of Police of the State of Connecticut, Appellees.	In Equity, No. 197.

BRIEF FOR THE ABOVE-NAMED APPELLEES.

Summary of Argument.

In the appellant's Specifications of Errors (Appellant's Brief, pp. 5-6), and in its Summary of Argument (*Id.*,

pp. 6-7), there is a breadth of expression which might possiblye indicate an intention to leave room for consideration of other constitutional questions than those concerned with the Commerce Clause of the Constitution of the United States. But the arguments and reasoning of the brief make it certain that the sole issue presented to this Court is, whether the statute in question invades the Commerce Clause. We are, accordingly, limiting our presentation of the case to this one issue, as the only question now before the Court.

Point 1.

The tax in question is a charge for the privilege of using the roads of the State of Connecticut; and when imposed upon those using the roads in interstate commerce, does not thereby offend the Commerce Clause of the Constitution of the United States.

Point 2.

The statute before the Court does not effect an unlawful discrimination against interstate commerce on account of the difference in the basis of tax upon intrastate and interstate carriers, or on account of granting to the former carriers credits and exemptions not given to the latter.

Point 3.

The statute does not create an unconstitutional discrimination against interstate commerce, because of the difference in remedies for collection of the tax.

Point 4.

There is no violation of the Commerce Clause on the ground that non-payment of the tax may result in the suspension of registration of motor vehicles engaged in interstate commerce.

Point 5.

Even though the suspension of registration feature of Section 3, Part II, be regarded as violating the Commerce Clause, the rest of the statute is, nevertheless, unaffected.

Point 6.

The Connecticut statute is not invalidated as a violation of the Commerce Clause, because of the Federal post road acts: Rev. Stat. at L., Sec. 3964; U. S. C., title 39, Sec. 481; Act of March 1, 1884, Chap. 9; 23 Stat. at L. 3; U. S. C., title 39, Sec. 482, or the Act of July 11, 1916, Chap. 241; 39 Stat. at L. 355; the amendment thereto of February 28, 1919, Chap. 69; 40 Stat. at L. 1189, 1200, or the Federal Highway Act of November 9, 1921, Chap. 119; 42 Stat. at L. 212; U. S. C., title 23, Sec. 1.

Point 7.

The Court did not err in excluding the testimony of the witness De Maris.

POINT 1.

The tax in question is a charge for the privilege of using the roads of the State of Connecticut; and when imposed upon those using the roads in interstate commerce, does not thereby offend the Commerce Clause of the Constitution of the United States.

The above statement expresses the law as settled by the decisions of this Court.

Clark v. *Poor*, 71 L. Ed. (U. S.) 776; 47 Sup. Ct. Rep. (Adv. Sheets) 702.
Kane v. *New Jersey*, 242 U. S. 160.
Hendrick v. *Maryland*, 235 U. S. 610.

> "The highways are public property. * * * Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep."
>
> *Clark* v. *Poor*, *supra*.

If we correctly read appellant's brief (pp. 8-10), it is argued that the law here challenged is invalid, because plaintiff is called upon by another law of Connecticut to pay for the registration of its automobiles as "public service motor vehicles" (Appendix B, Appellant's Brief), and so the compensation exacted by the latter law is duplicated or added to by the former.

So much of this latter law as deals with registration and equipment of motor vehicles, licensing of drivers and fees is set out in full in Appendix A hereof, and requires, among other things, registration of *all* automobiles according to the classification therein prescribed. That registration of automobiles, even of those engaged in in-

terstate commerce, may lawfully be demanded by a State, is not, and indeed cannot be, denied by the appellant, in view of the *Clark Kane* and *Hendrick* cases, *supra*. The Connecticut registration statute, when read in its entirety, is, in its essence, a police measure, but since there is included the imposition of fees and charges, creating a money yield, which is contemplated as exceeding the cost of administration of the law, it partakes to that limited and incidental extent of a revenue measure. Connecticut's registration law is entitled "*An Act Concerning Motor Vehicles*," and embraces in its provisions, including fee charges, *all* motor vehicles, while the title of the statute in the case at bar is "*An Act Providing an Excise on the Use of Public Highways by Public Service Motor Busses*," and searches out and taxes only the use of roads by operation of public service busses.

In discussing two state enactments, in the aspects now being considered essentially like the two statutes we are now discussing, the Massachusetts Court declared that the registration statute imposed a tax "on the privilege of registering for operation upon highways a motor vehicle, as to construction, size, horsepower, lights, safety, equipment, and otherwise proper to be used in conformity to standing laws all as approved by public officers," while the other, the tax, statute imposed a tax "on the use of the highways by automobiles." The subjects of taxation under the two laws were, therefore, separate and distinct in kind from each other. This is, likewise, true here, and we have, therefore, neither duplication nor superimposition of taxes, as appellant seems to claim.

> *Opinion of the Justices*, 250 Mass. 591; 148 N. E. Rep. 889.

Then, too, the taxation under the two Connecticut statutes, being for proper purposes, "the use to which the pro-

ceeds are put is not a matter which concerns the plaintiffs."

Clark v. *Poor, supra.*

And as the Court further declares in *Clark* v. *Poor, supra,* "Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use."

POINT 2.

The statute before the Court does not effect an unlawful discrimination against interstate commerce on account of the difference in the basis of tax upon intrastate and interstate carriers, or on account of granting to the former carriers credits and exemptions not given to the latter.

A.

In appellant's brief, Points II and III-A (pp. 10-22), it is argued that, inasmuch as the local operator is charged upon a gross receipts basis and receives credits for local property taxes and is excepted from taxation under Chapter 73 of the General Statutes of Connecticut, while the interstate operator is taxed upon a mileage basis, and does not receive the above-mentioned credits and exemptions, there results an unconstitutional discrimination against interstate commerce. For this contention, reliance is placed on the cases cited on page 10 of appellant's brief.

But these cases dealt with state laws, which taxed or imposed inspection burdens and charges upon the products or property of other states brought into the legislating state, at the same time wholly excepting or exempting the

products or property of the latter state. Obviously, such enactments discriminate unlawfully against interstate commerce. In the case at bar, however, we have not the situation of the products or property of other states, nor have we either an express or disguised effort to allow intrastate commerce to go completely untaxed, while taxing interstate commerce. Those engaged in both kinds of commerce are here taxed.

Of course, where interstate commerce is affected by taxation, and intrastate commerce is not taxed at all, or is wholly exempted, there is an immediately patent and necessary inequality producing forbidden discrimination. But where both classes of commerce are involved in taxation, as is the case here, though the tax bases and procedures differ, it remains to be proved that the taxation in actual operation and effect results in inequality and discrimination. So, here, in the absence of proof that the interstate operator on his basis is charged more, per mile, than is the intrastate operator on his basis, for like privileges, there is no evidence before the Court of the inequality essential to discrimination. The appellant has offered no evidence of this fact, but asks the Court to infer it. The appellant has not sustained the burden of proving in this case the essential fact that the enforcement of the act actually operates to prejudice interstate commerce.

Hendrick v. *Maryland, supra,* 624.
Interstate Busses Corp. v. *Holyoke St. Ry. Co.,* 273 U. S. (Adv. Sheets) 45, 51.

One cannot attack the constitutionality of a statute unless he is thereby affected injuriously and deprived of constitutional rights, even though the statute is unconstitutional as to others.

12 *C. J., Constitutional Law,* Sec. 177, pp. 760-764.

B.

It is to be borne in mind, as clearly ruled in the *Clark*, *Hendrick* and *Kane* cases, *supra*, that the tax is one for the use of the special privileges and facilities afforded by the public highways of the state, and that the state may, by way of taxation, charge both domestic and interstate commerce for the enjoyment of such privileges and facilities and exact reimbursement for damage done to the roads.

The purpose of such legislation, now nation-wide, is just such charge for use and reimbursement for damage, and the policy is to classify vehicles, and vary the tax, in accordance with the extent of such use and damage.

Kane v. *New Jersey*, 81 N. J. L. 594; 80 Atl. 453; L. R. A. 1917, B-553.

Camas Stage Co. v. *Kozer*, 104 Ore. 600; 209 Pac. 95; 25 A. L. R. 27.

Ex Parte Schuler, 167 Calif. 282; 139 Pac. 685, 690.

Re Hoffert, 34 S. D. 271; 148 N. W. 20; 52 L. R. A. (N. S.) 949.

State v. *Kozer*, 242 Pac. (Ore.) 621.

Dohs v. *Holm*, 152 Minn. 529; 189 N. W. 418.

Westfalls etc. Co. v. *Chicago*, 280 Ill. 318; 117 N. E. 439.

Opinion of the Justices, 148 N. E. (Mass.) 889, *supra*.

Fisher Bros. v. *Brown*, 111 Ohio St. 602; 146 N. E. 100.

Raymond v. *Holm*, 206 N. W. (Minn.) 166.

Jasnowski v. *Dilworth*, 191 Mich. 287; 157 N. W. 891.

Thus, such taxes have been held to be privilege and not property taxes.

> *Jasnowski* v. *Dilworth*, 191 Mich. 287; 157 N. W. 891, *supra*.
> *Camas Stage Co.* v. *Kozer*, 104 Ore. 600; 209 Pac. 95; 25 A. L. R. 27, *supra*.
> *Lillard* v. *Melton*, 103 S. C. 10; 87 S. E. 421.
> *Berry, Automobiles* (5th Ed.), Sec. 101, pp. 81-83.

So, a state statute of this type, which exacts an annual license and fee from residents and non-residents, engaged either in intrastate or interstate commerce, is not a discrimination against non-residents or interstate commerce, from the fact that a non-resident, engaged in interstate commerce, might use the state roads only one day a year, and still be obliged to pay the full annual fee. The probability that the body of non-residents, traveling into or through the taxing state in the course of interstate commerce, would make substantially less use of the state highways, than does the body of resident motorists, does not prevent the lesser user to be taxed as high as the greater, and involves thereby no discrimination. In fixing the scheme of taxation, therefore, as between those whose use may be more or less, the state, in its discretion, may adjust same to the possibilities of greater or lesser use; and may, though it is not obliged to, reduce the tax on the lesser use.

> *Kane* v. *New Jersey*, 242 U. S. 160, *supra*, 167-168.

It would seem to follow, therefore, that so long as the tax remains in reasonable relation to the privilege taxed, the discretion of the state goes to the point of exerting its taxing powers in proportion to, and adjusting the scheme,

basis and amount of tax to, the possible extent and result of the use of the roads, and that reasonable differentiations in so doing are not discriminatory against interstate commerce.

In Connecticut, the general subject of operation of public service motor vehicles for the transportation of passengers for hire is governed by statute and controlled by the State Public Utilities Commission.

> *Public Acts of Connecticut, 1921,* Chap. 77 (Appendix B hereof).

Necessarily, state control, in a large way, is applicable only to intrastate business, as distinguished from interstate commerce.

> *Buck* v. *Kuykendall,* 267 U. S. 307; 38 A. L. R. 286.
>
> *Geo. W. Bush & Sons Co.* v. *Maloy et al.,* 267 U. S. 317.

In the broadest possible way, the operators of motor vehicles coming within the purview of *Chapter* 77, *Public Acts, 1921,* are subjected to the jurisdiction of the Utilities Commission and its rules and regulations, respecting "routes, fares, speed, schedules, continuity of service and the convenience and safety of passengers and the public." The privilege to engage in business is dependent upon obtaining a certificate of public convenience and necessity from the Commission, specifying the route to be covered and the service to be rendered. As to such subjects, any town, city or borough, touched by the operation, is to be heard. Certificates are subject to amendment and revocation. Fines are provided for violation of *Chapter* 77, *supra,* or of the rules, regulations and orders thereunder.

Here, then, we have a comprehensive scheme of supervision and control by the state, in so far as are concerned the motor vehicle carriers, doing an intrastate business, none of which is or can be extended to interstate carriers. The interstate carrier selects his routes and roads at will; the intrastate carrier travels only the routes and roads assigned to him by the state, subject to the right of the city, town or borough to be heard as to the same. The interstate operator travels the roads as often as he chooses; the local operators may travel the roads only in accordance with prescribed schedules. The interstate bus charges such rates as the traffic will bear, and, of course, uses the state's roads as an indispensable means of carrying and transporting the public; for a more restricted use of such roads, the local bus may charge only the rates permitted by the state. The necessity to keep uniform designated accounts, and make reports as required by *Chapter 54, Public Acts of Connecticut, 1925* (Appendix C hereof), makes it possible for the state to ascertain and eliminate those local operators whose use of the roads is not required in the interests of public necessity or convenience, or who have not the earning ability to maintain the standard of service which the public should have in exchange for use of the roads. In the end, it is the public, whose money is spent in building, repairing, improving, maintaining and policing the roads, and if the highways are to be devoted to public transportation, those whose use of the highway is a special one, for the prosecution of a business, making inroads upon the space and life of the highways, must be called upon to aid towards defraying the enormous sums which are invested and spent in furnishing, maintaining and increasing these facilities. To insure this aid, the state should be and is allowed to exact taxes, and the taxes ought to be imposed in the proportion of the degree of use. By reason of its uncontrolled choice of roads, and

unrestricted frequency of passage thereon, the interstate carrier is a source of possible greater use of, and wear and damage to, the roads, than is the carefully regulated intrastate carrier, and the mileage covered by the interstate carrier is not and cannot be subject to official check-up, as in the case of the regulated intrastate carrier. To adjust the scheme of taxation to the situation of possible greater and lesser use and damage is a logical and sound conclusion from the admissible taxation of motor vehicles, in interstate commerce, under the decisions of the Supreme Court of the United States in the *Clark*, *Hendrick* and *Kane* cases, *supra*. Such flexibility of scheme of taxation is in no sense a discrimination against interstate commerce, but, rather, a means of creating equality of the burden of taxation exacted, and the burden of road use and damage permitted. To paraphrase what was said in the *Kane* case, at page 167, with reference to the New Jersey law, requiring non-residents to appoint a resident agent to receive service of process, it puts interstate commerce upon an equality with intrastate commerce.

See, also,

Hess v. *Pawloski*, 274 U. S. (Adv. Sheets) 352.

C.

In the *Kane* case, *supra*, the Supreme Court of the United States declared that the method of taxation was a discretionary matter with the state, and that it was permissible, for instance, to tax by horsepower or by mileage. Connecticut's general policy is to tax on gross receipts, public utilities, such as steam and street railways, water, gas, electric and power companies, express, telegraph, telephone and cable companies, etc.

General Statutes of Connecticut, 1918, Chap. 72.

In pursuance of this policy, Part I of the statute, involved in the case at bar, taxes intrastate carriers by motor vehicles on their gross receipts, but, on the other hand, taxes the interstate carriers on a mileage basis. We have already pointed out the difference between the groups. But there are still other considerations which must have been in the legislative mind, highly practical considerations which we will now discuss.

There being no doubt of the power of the state to tax the owners of motor cars, on account of the use of the highways, the practical factors underlying the scheme of taxation are important as bearing upon its validity. Now, in the case at bar, there are practical obstacles in the law, interfering with the adoption by the legislature of the identical basis for the tax for the two classes of carriers. The difficulty of taxing the gross receipts of the interstate carriers is at once apparent. The receipts arising from interstate commerce cannot be taxed.

> 1 *Cooley, Taxation* (4th Ed.), par. 395, pp. 862-867.

It is true, that state taxes, in form on gross receipts, have sometimes been sustained, but it will be found that in each such instance the court has been quick to declare that the imposition is only in form on gross receipts and is in substance on property.

> 1 *Cooley, Taxation* (4th Ed.), par. 397, pp. 869-873.

But there are sharply drawn limitations upon such a tax on property, through an imposition upon gross receipts. There must in fact be property within the state, and subject to its taxing jurisdiction; the amount of the tax must be made dependent in fact on the value of the

property within the state; and it may not exceed a sum which might otherwise be exacted by a direct tax on that very property.

In such cases the function of the receipts, as a tax basis, is solely to act as index or measure of the value of the property reached for taxation, through the receipts.

1 *Cooley, Taxation* (4th Ed.), pars. 396-397, pp. 867-873.

Practically, it is improbable that the interstate operator will have in the state and subject to its taxing power any property used in connection with his business, except, perhaps, as here (R. 20), the rolling stock, i. e., the busses, moving in and out of the state—in this case three out of thirteen busses in operation. A property tax on these busses, by way of the receipts method, would be limited to an amount which would be legitimate as an ordinary tax on such property—in this case three out of thirteen busses. Clearly, such a tax would not meet the purpose contemplated by the legislature, when, in its discretion, as it might do, it sought to charge for the privilege of highway user. Property and excise taxation differ from each other in form and substance, exist independently of each other, and are cumulative methods of raising revenue.

37 *C. J., Licenses,* Sec. 9, pp. 171-172; Sec. 64 (3), pp. 211-212.

Within constitutional limtiations the legislature has full discretion in its choice of methods, kinds and objects of taxation.

See

State v. *Travelers Ins. Co.,* 73 Conn. 255.

Of course, when a property tax is created by an imposition in terms upon gross receipts, only so much of the receipts may be considered as may be attributed to the taxing state, and this is accomplished by taxing such proportion of the total interstate receipts as is represented by the ratio between the property or mileage within the state and the entire property or mileage both in and out of the state.

> 1 *Cooley, Taxation* (4th Ed.), par. 396, pp. 867-869.

The property ratio is a perfectly practical and generally just one, for commercial and industrial businesses, and the mileage ratio is well adapted to railroads, trolley lines, telephone and telegraph concerns, distributors of electricity, and pipe lines. But, in the case of the operator, whose total business assets are his busses, whose situs may be anywhere and on short notice, the property ratio is manifestly not a feasible one. Nor is the mileage ratio practical. Whereas the railroad, wire companies, etc., have fixed rights of way, trackage, poles, wires, pipes and the like, the existence, whereabouts and extent of which are open to view, and generally known, and are fixed and permanent in structure, not easily varied and capable of simple investigation and measurement, the public service motor vehicle owner has no right of way or trackage, other than the public highway, his mileage varies according to the termini and routes he chooses from day to day, and unsupervised as he is, he is free to vary his routes at pleasure. These conditions would throw an enormous policing labor and expense upon the tax authorities, especially to ascertain the correct extrastate mileage, and would seriously impair, if not render unprofitable and hopeless, the administration and enforcement of any law, in which the

mileage without the state would necessarily be an element in the mileage ratio.

The legislature must be presumed to have had in mind all these various considerations when it adopted the scheme of taxation embodied in the statute, designed to reach, in just apportionment, those whose use of the highways called for compensation to the state.

D.

From what has been said on this point, we believe that we have here two apparently similar, but in truth widely different, users of the public roads, in respect of the extent and nature of the use and the practical means of reaching them by taxation. Since the state is permitted to tax, it should follow that it may do so by such reasonable differences in tax procedure as will adjust the tax to the extent of the use of, and the degree of wear and damage to, the roads, and as will make it possible, in a realistic and practical way, to determine fairly the amount of the tax and collect it. Without this, the conceded right to tax must always remain unfulfilled. The test, we respectfully suggest, should be whether, in the light of all the factors, equality is maintained, notwithstanding seeming differences. And, finally, the inequality, if any, must be proved as any other fact.

POINT 3.

The statute does not create an unconstitutional discrimination against interstate commerce, because of the difference in remedies for collection of the tax.

The statute, in Section 5 thereof, creates a lien on all the property of the intrastate operator. By Section 7 of the statute and Section 1389, General Statutes of Connecticut (Appendix E, Appellant's Brief), the tax may be collected by summary judicial proceeding. Under the law of Connecticut the collection from the interstate operator must be accomplished by an ordinary plenary suit to recover a debt.

See

State v. *N. H. & H. R. R. Co.*, 60 Conn. 326, 333-334; 22 Atl. 765.

By Section 3, Part II of the statute (Appellant's Brief, p. 40), the interstate operator is subject to suspension of registration of his motor vehicle for failure to comply with the statute. By Section 7 of the statute, intrastate operators failing to make the required returns are subject to Section 1388, General Statutes of Connecticut, which reads as follows, viz.:

> "If the returns required by sections 1380 and 1382 are not made within ten days after the time fixed, the officer or agent neglecting or refusing to make the same shall be fined not less than five hundred dollars nor more than five thousand dollars."

In either the summary proceeding against the intrastate operator, or the plenary suit against the interstate operator, the opportunities are equal to contest the tax, and

what difference there is between the two methods is in favor of the interstate operator.

The difference between the supplementary remedies of lien in the one case and suspension of registration in the other is predicated upon the practical factors of distinction between the two sets of operators already fully discussed. Practically, the interstate operator would have no, or, at best, inconsiderable, property in the state of fixed situs there. Indeed, the facts in the case at bar show that out of thirteen busses operated by the appellant over Connecticut roads only three are subject to and pay property taxes in the state (R., p. 20, par. 22). The intrastate operator would have all his busses and other property in the state. In the latter case the lien would be effective, and in the former it would be utterly inadequate. The differences between the lien and suspension methods, when applied to the facts, will not be discriminatory against interstate commerce but will tend to put both groups on a footing of equality.

Hess v. *Pawloski, supra.*
Kane v. *New Jersey, supra,* 167.

POINT 4.

There is no violation of the Commerce Clause on the ground that non-payment of the tax may result in suspension of registration of motor vehicles engaged in interstate commerce.

There is no distinction in principle between refusal to license the use of the roads, except upon payment of a charge, and suspension of such license for non-payment. This Court, in *Kane* v. *New Jersey, supra,* and *Hendrick* v. *Maryland, supra,* had no difficulty in sustaining the en-

actments then before it, even though they contained requirements of payment of taxes as condition precedent to the issue of licenses.

The statutes there considered were not merely police regulations, but were revenue measures as well.

Kane v. *New Jersey, supra*, par. 4, pp. 168-169.

POINT 5.

Even though the suspension of registration provision of Section 3, Part II, be regarded as violating the Commerce Clause, the rest of the statute is, nevertheless, unaffected.

"A statute bad in part is not necessarily void in its entirety. Provisions within the legislative power may stand if separable from the bad. * * * But a provision, inherently unobjectionable, cannot be deemed separable unless it appears both that, standing alone, legal effect can be given to it and that the legislature intended the provision to stand, in case others included in the act and held bad should fail."

Dorchy v. *Kansas*, 264 U. S. 286, 289-290.
6 *R. C. L.*, pp. 121-125, Secs. 121-122.

Language in a statute, such as that found here in Section 5, Part II, provides a rule of construction, which is of aid in determining the legislative intent, that the invalidity of a part of the statute shall not destroy the statute as a whole.

Dorchy v. *Kansas, supra*, 290.

We believe it to be apparent that the legislature would have passed the statute before the Court, without the

suspension of registration feature of Section 3, Part II, for this feature was merely designed to aid in the collection of the tax, and was incidental to and independent of the predominating object and purpose to impose a charge for the use of the roads. The legislature must be held to have known that, quite apart from and in the absence of the aid of Section 3, Part II, the tax, as we have already pointed out, was otherwise collectible by suit.

POINT 6.

The Connecticut statute is not invalidated as a violation of the Commerce Clause, because of the Federal post road acts: Rev. Stat. at L., Sec. 3964; U. S. C., title 39, Sec. 481; Act of March 1, 1884, Chap. 9; 23 Stat. at L. 3; U. S. C., title 39, Sec. 482, or the Act of July 11, 1916, Chap. 241; 39 Stat. at L. 355; the amendment thereto of February 28, 1919, Chap. 69; 40 Stat. at L. 1189, 1200, or the Federal Highway Act of November 9, 1921, Chap. 119; 42 Stat. at L. 212; U. S. C., title 23, Sec. 1.

The maintenance of the Federal aided roads is primarily imposed upon the state. Regulation as to the use of such roads is in the hands of the state, and may be exercised to conserve them, even as against interstate commerce. The Federal laws hereinbefore cited do not take away from the state either its duty or its rights, regarding the care and preservation of the highways.

> *Morris* v. *Duby*, 274 U. S. (Adv. Sheets) 135, 143-145.

We believe that we have already shown that the power of regulation and control which the state has to maintain

and conserve roads includes the power to tax even those engaged in interstate commerce for the privilege of using the roads, unless the Federal Acts referred to prevent, and this they do not do.

Morris v. *Duby, supra*, 144.

"The Federal Aid legislation is of significance, not because of the aid given by the United States for the construction of particular highways, but because those acts make clear the purpose of Congress that state highways shall be opened to interstate commerce." In other words, the United States has thus sought to better the highway systems of the Union and to facilitate interstate commerce, without disturbing the general constitutional distinction between national and state powers and leaving untouched the established law of the Commerce Clause and the respective rights of the Federal and state governments.

Geo. W. Bush & Sons Co. v. *Maloy*, 267 U. S. 317, *supra.*
Liberty Highway Co. v. *Michigan P. U. Commission*, 294 Fed. 703, 708-709.
Morris v. *Duby, supra*, 144-145.
State v. *Oligny*, 202 N. W. (Minn.) 893.

POINT 7.

The Court did not err in excluding the testimony of the witness De Maris.

The basis of this claim of error is that the testimony (R. 33), had it been admitted, would have been relevant and material to the objection to the statute urged under

appellant's Point 1. This subject was discussed by us under our Point 1, and requires no further discussion.

Respectfully submitted,

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APPENDIX A.

Chapter 400 of Public Acts of Connecticut of 1921, as Amended by Chapters 257 and 280 of the Public Acts of 1923, and by Chapters 195 and 235 of the Public Acts of 1925.

PART III.

LICENSES.

A.

Motor Vehicle Registration.

Sec. 8. *Applications.* Before any motor vehicle shall be operated upon any highway, it shall be registered in the office of the commissioner of motor vehicles. The owner of any motor vehicle desiring registration shall file in the office of said commissioner an application, under oath, containing such information as the commissioner may require. Said commissioner shall refuse to register any motor vehicle which shall not be equipped with lighting devices as prescribed by section forty-one of this act, or any motor vehicle the sum of the light weight and carrying capacity of which shall exceed twenty-five thousand pounds, except with the written approval of the highway commissioner, or any motor vehicle the equipment of which shall fail to comply with the provisions of this act or any motor vehicle under a trade name without a certified copy of the notice required by the provisions of section 6505 of the general statutes. Any person who shall operate or allow to be operated any motor vehicle upon any public highway, before the same shall have been registered, or who shall register any motor vehicle owned

by another without the consent of such owner shall be fined not more than fifty dollars.

SEC. 9. *Registrations.* (a) The commissioner may register any motor vehicle under the provisions of this act, may assign to such motor vehicle a distinguishing registration number and may thereupon issue to the owner a certificate of registration which shall contain the registration number assigned to such motor vehicle, and which shall be in such form and shall contain such further information as said commissioner may determine. The commissioner of motor vehicles may refuse to register any motor vehicle which shall be incapable of maintaining a rate of speed of at least twelve miles per hour, without the approval in writing of the highway commissioner. Any such motor vehicle, if registered, shall have special registration. (b) Such certificate shall at all times be carried upon such motor vehicle when upon the public highway, except as otherwise provided. (c) An applicant for registration of a motor vehicle, who shall file his application therefor to take effect after the last day of March in any year, shall be entitled to a pro rata reduction in the fee for such registration calculated to the first day of the month in which such registration is to take effect. (d) The commissioner may, at his discretion, issue to the owner of a motor vehicle a temporary registration, application for which shall conform to the provisions of section eight of this act. He may require a deposit from such applicant for temporary registration of a sum equal to the cost of the yearly registration for such motor vehicle, such sum less the proper fee to be returned on surrender of such registration and temporary number plate. (e) Any person who shall violate any provision of sub-section (b) of this section shall be fined not more than three dollars for the first offense and not more than fifty dollars for each subsequent offense.

SEC. 10. *Fifteen-mile limit.* Any person owning a motor vehicle who resides in an adjoining state within a distance of fifteen miles by highway of the boundary line of this state and who has complied with the laws relative to motor vehicles and the operation thereof in the state wherein he resides, upon application to the commissioner and payment of such fee as may be prescribed by the commissioner, may have such vehicle registered and may operate the same upon the highways of this state within a distance of fifteen miles by highway of the boundary line of the state in which he resides, provided such state grants similar privileges to residents of this state and charges a fee not in excess of that so fixed by the commissioner. The foregoing privileges shall be in addition to any rights or privileges granted to nonresidents by the provisions of section seventeen of this act. The commissioner may furnish to every person whose vehicle is registered as provided in this section, registration certificate and number plates of suitable design, displayed as required, when such vehicle is in operation upon the highways of this state.

SEC. 11. *Transfer of ownership.* (a) Upon the transfer of ownership of any motor vehicle its registration shall expire, and the person in whose name such vehicle is registered shall, within twenty-four hours, return the certificate of registration and the number plates to the commissioner, with a written notice under oath containing the date of such transfer of ownership, and the name, place of residence and postoffice address of the owner. (b) A person who transfers to another the ownership of a registered motor vehicle owned by him, upon the filing of a new application and upon the payment of the proper fee, may have registered in his name another motor vehicle for the remainder of the calendar year, provided the total piston displacement or carrying capacity of such other

motor vehicle or the actual horse power when such vehicle is driven by steam or electric power, is the same or less than that of the motor vehicle registered by him, the registration of which has been surrendered; but if the total piston displacement or carrying capacity or actual horse power when such vehicle is driven by steam or electric power of such other motor vehicle is greater than that of the motor vehicle the registration of which has been surrendered, the applicant shall pay, in addition to such fee, the difference between the fee paid by him for the surrendered registration and the fee for the registration of such motor vehicle of greater total piston displacement or carrying capacity, or actual horse power when such vehicle is driven by steam or electric power, provided when such transfer is from a commercial motor vehicle to a passenger motor vehicle, or from a passenger motor vehicle to a commercial motor vehicle, the adjustment of the fee for transfer, if any, shall be made to the greater amount, whether based upon total piston displacement or carrying capacity, or actual horse power when a motor vehicle is driven by electric or steam power, and, when the fee so calculated is greater than the fee paid for the surrendered registration, such applicant shall pay the difference between the fee paid for the surrendered registration and the fee for the registration applied for; provided the minimum fee for any transfer under this subsection shall be two dollars. All motor vehicle registrations as provided for in this act, except temporary registrations, shall continue in force until midnight on the thirty-first day of December of the year in which issued.

(c) Any person who shall sell any motor vehicle which is not registered under the provisions of section nine of this act, other than a new motor vehicle, shall, within forty-eight hours of such sale, certify under oath to the commissioner, on blanks provided by him, such informa-

tion as the commissioner may require. (d) Any person who shall violate any provision of sub-section (a) of this section shall be fined not more than twenty-five dollars. Any person who shall violate any provision of sub-section (c) of this section shall be fined not more than one hundred dollars for the first offense and for a subsequent offense not more than five hundred dollars or imprisoned not more than one year or both.

SEC. 12. *Number plates.* (a) Each motor vehicle shall, while in use or operation upon any public highway, have displayed in a conspicuous place at the front and the rear of such vehicle the number plates assigned by the commissioner for the year when displayed; provided, on renewal of any registration, the number plates so assigned for the ensuing year may be so displayed on the last week day of December of the year preceding that for which such number plates shall have been assigned; and provided any motor cycle shall be required to display but one number plate, which shall be at the rear of such motor cycle. (b) Said commissioner shall furnish annually, without additional charge and as a part of the registration, one pair of number plates for each individually registered motor vehicle and not to exceed twelve pairs for each general registration number of each registered dealer, manufacturer or repairer, upon application therefor. (c) Such number plates when displayed upon motor vehicles shall be entirely unobscured and the numerals and letters thereon shall be plainly legible at all times. Such number plates shall be horizontal, and shall be so fastened as not to swing and the lower edges thereof shall be at least fourteen inches from the ground; and during the time when a motor vehicle is required to display lights the rear number plate shall be so illuminated as to be legible at a distance of fifty

feet. Not more than one number plate shall be displayed on the front or rear of any motor vehicle in operation upon the public highways of the state; provided any motor vehicle may, upon permission of the commissioner of motor vehicles, display more than one number plate in front or rear, subject to such conditions as said commissioner shall prescribe. If any number plate supplied by the commissioner shall be lost, or if the registered number thereon shall become mutilated or illegible, the owner of or the person in control of the motor vehicle for which such number plate was furnished shall immediately place a temporary number plate bearing his registration number upon such motor vehicle, which temporary number plate shall conform to the regular number plate and shall be displayed as nearly as possible as herein provided for such regular number plate; and such person shall, within twenty-four hours after such loss or mutilation of his number plate, give notice thereof to the commissioner, apply under oath for a new number plate and surrender the remaining number plate, if any, and thereupon said commissioner shall supply new number plates upon payment of the fee therefor as hereinafter provided. (d) All number plates shall be the property of the state and no title therein shall pass to any person registering a motor vehicle under the provisions of this act. (e) Any person who shall violate any provision of sub-sections (a), (c) or (d) of this section shall be fined not more than fifty dollars.

SEC. 13. *Applications and registrations of manufacturers, dealers and repairers.* (a) Every manufacturer of, dealer in or repairer of motor vehicles may, instead of registering each motor vehicle owned by him or temporarily in his custody, make application to said commissioner for a general distinguishing number and mark,

and the commissioner may, if satisfied as to the facts stated in such application, issue to the applicant a certificate or certificates of registration containing the distinguishing number and mark assigned to such applicant, and made in such form and containing such further information as said commissioner may determine; and every motor vehicle owned by such applicant or temporarily in his custody shall be regarded as registered under and having assigned to it such general distinguishing number and mark until sold. Any manufacturer, dealer or repairer may, upon application as hereinbefore required and upon his written request therefor, register any motor vehicle owned by him or temporarily in his custody under a special distinguishing number and mark, either for the purpose of operating or causing to be operated such motor vehicle for his personal use or for the purpose of loaning such motor vehicle or its number plates, or both, to any person for a period not to exceed five days. Manufacturers, dealers or repairers shall not be required to carry their certificates upon the motor vehicles registered under the provisions of this section, but shall be required to keep a sufficient record of each person operating any motor vehicle so registered, in sufficient detail, to promptly identify such person at any specified time, which record shall be subject to the inspection of any officer designated by the commissioner. If any manufacturer, dealer or repairer shall fail to keep such record or to produce it for inspection as hereinbefore provided, such failure shall be sufficient cause for the commissioner to cancel such registration. (b) No manufacturer, dealer or repairer shall use any motor vehicle registered in accordance with the provisions of this section, except a motor vehicle registered under a special distinguishing number and mark, for any other purpose than the trial or adjustment of such motor vehicle, its transportation from the place of purchase by

a dealer to the dealer's place of business or its demonstration to a prospective buyer or for some purpose incidental to and within the scope of the business of manufacturing, purchasing, selling or repairing motor vehicles; provided no such motor vehicle shall be used as a commercial motor vehicle except for demonstration to a prospective buyer for more than two consecutive days. No motor vehicle registered under the provisions of this section shall be rented for hire or used for the purpose of conveying passengers or freight for hire. (c) No person other than a bona fide manufacturer, dealer or repairer shall obtain or use a registration certificate or the corresponding number plates issued by authority of the provisions of this section except for the purposes mentioned herein; and no person who shall have registered a motor vehicle under the provisions of this section shall loan its number plates to any person, except as hereinbefore provided. (d) No registration of any manufacturer, dealer or repairer shall be transferable. (e) The commissioner of motor vehicles may at any time require that a manufacturer, dealer or repairer of motor vehicles shall prove that he is a bona fide manufacturer, dealer or repairer, and failure to so prove shall be sufficient cause for the cancellation of the registration of such manufacturer, dealer or repairer. (f) Any person who shall violate any provision of this section shall be fined not more than fifty dollars for the first offense and for any subsequent offense not more than one hundred dollars.

SEC. 14. *Public service motor vehicles.* (a) Every owner of a public service motor vehicle desiring registration shall file in the office of the commissioner a special application under oath, containing his name, residence and postoffice address; a description of the motor vehicle owned by him, including the name of the maker and such other

information as said commissioner may require. Said commissioner may register such motor vehicle as a jitney or as a public service motor vehicle other than a jitney; provided no such registration shall be issued to the owner of any public service motor vehicle unless such motor vehicle shall be in suitable condition for carrying passengers and shall be equipped as required by law; and provided the registration number and certificate of registration of all jitneys shall, and of all public service motor vehicles may, be special, and such certificate of registration shall contain such information as the commissioner may require; provided no registration shall be issued to the owner of a jitney who shall not have obtained a certificate of public convenience and necessity from the public utilities commission, in accordance with the provisions of chapter 77 of the public acts of 1921. No public service motor vehicle shall be registered unless the owner thereof shall have complied with the provisions of chapter 340 of the public acts of 1921. (b) The certificate of registration of a public service motor vehicle shall at all times be carried upon such motor vehicle, and shall be subject to examination upon demand by any person authorized by law. (c) Any person who shall violate any provision of sub-section (a) of this section shall be fined not more than fifty dollars. Any person who shall violate any provision of sub-section (b) of this section shall be fined for the first offense not more than three dollars and for each subsequent offense not more than fifty dollars.

B.

Operators' Licenses.

Sec. 15. *Applications.* (a) No person shall operate a motor vehicle upon any public highway of this state until

he shall have obtained from the commissioner a license for such purpose, provided any person over sixteen years of age who has not been refused and who has not had his motor vehicle operator's license suspended or revoked, may operate a motor vehicle while under the instruction of, and accompanied by, a licensed operator, who shall have full control of the motor vehicle as provided by law. No such license shall be issued until the applicant therefor has signed and filed with the commissioner an application under oath, except that renewals from the year just previous need not be under oath, stating such information as the commissioner shall require; nor shall such license be issued until the commissioner is satisfied that the applicant is over eighteen years of age and is a proper person to receive such license. (b) Before granting a license to any applicant who has not held a Connecticut motor vehicle operator's license during the preceding year, the commissioner shall require such applicant to demonstrate personally to him, his deputy or a motor vehicle inspector or an agent of the commissioner, in such manner as said commissioner may direct, that such applicant is a proper person to operate a motor vehicle, has sufficient knowledge of the mechanism of motor vehicles to insure their safe operation by him, and a satisfactory knowledge of all laws concerning motor vehicles and the rules of the road; provided, when any such applicant shall have held a license from a state where a similar examination is required, the commissioner may waive part or all of such examination in his discretion. When the commissioner is satisfied as to the ability and competency of any applicant, he may issue to him a license, either unlimited or containing such limitations as the commissioner shall deem advisable; provided, if any applicant suffers from any physical defect or from any disease which might affect the operation by him of a motor vehicle, the

commissioner may require such applicant to demonstrate personally that, notwithstanding such defect or disease, he is a proper person to operate a motor vehicle, and he may further require a certificate of such applicant's condition signed by a proper medical authority designated by said commissioner, which certificate shall in all cases be treated as confidential by said commissioner. A license containing such limitations as the commissioner shall deem advisable may be issued in any case, provided nothing in this section shall be construed to prevent the commissioner from refusing a license, either limited or unlimited, to any person, whom he shall deem incapable of operating a motor vehicle with safety to himself and the public. (c) Any person who shall violate any provision of sub-section (a) of this section shall be fined not more than fifty dollars.

SEC. 16. *Suspension of licenses to be stated on application.* No person whose operator's license has been suspended or revoked shall apply for a new license without making known to the commissioner that his old license was suspended or revoked. No person who wilfully fails to furnish such information shall receive a new license or renewal of the old for a period of one year from the time such failure is proven. Any person who shall violate any provision of this section shall be fined not more than fifty dollars or imprisoned not more than ten days or both.

SEC. 17. *Nonresidents.* Any nonresident over eighteen years of age may operate any motor vehicle upon the highways of this state for a period not exceeding fifteen days, or parts of days, not necessarily consecutive, in any year, without complying with the provisions of this act requiring the registration of motor vehicles and the licensing of

operators, provided such nonresident shall have complied with the laws of the state within which he resides relating to the registration of motor vehicles and the operation thereof, and provided such nonresident operator's license and the registration of the motor vehicle so operated by him shall have been issued by the same state. No nonresident shall operate a public service motor vehicle without first obtaining a public service or jitney registration and a public service or jitney operator's license from this state, and no nonresident shall operate a motor vehicle with a load greater than the capacity designated by the commissioner as legal for a like motor vehicle of Connecticut registration. Such nonresident shall cause to be displayed on the motor vehicle the distinguishing number or mark required by the state within which the motor vehicle is registered and such nonresident shall conform to all the requirements of this act regarding equipment, marking and control of motor vehicles in the same manner as if such motor vehicle were registered in this state, provided any nonresident convicted of a violation of any provision of this act shall, for the remainder of the calendar year, comply with the requirements of this act relative to the registration of motor vehicles and operators' licenses of residents as if he were a resident of this state. No motor vehicle owned by a person who shall have been found guilty of such violation shall be operated upon the highways of this state, without registration herein, during the remainder of such calendar year until the commissioner shall find that such motor vehicle has not been transferred by such person with intent to evade the provisions of this section. Any person who shall violate any provision of this section shall be fined not more than one hundred dollars.

SEC. 18. *License void when.* Any motor vehicle registration certificate or operator's license issued upon an ap-

plication containing any material false statement of fact shall be void from the date of its issue and shall be surrendered with any number plates to the commissioner upon demand therefor. Any moneys paid for the same shall be forfeited to the state. Any person who shall fail to surrender such motor vehicle registration or operator's license or number plates upon demand of the commissioner or other person authorized by the commissioner to make such demand shall be fined not more than fifty dollars.

SEC. 19. *Commissioner to furnish blanks.* All applications for motor vehicle registrations or operators' licenses shall be made upon blanks furnished by the commissioner, and such application blanks shall be in such form and contain such provisions and such information as the commissioner may determine. A number shall be assigned to each motor vehicle registration and operator's license and a proper record of all applications for motor vehicle registrations and operators' licenses issued shall be kept by said commissioner at his main office.

SEC. 20. *Indorsing signature.* Every person licensed to operate a motor vehicle shall, before operating any motor vehicle upon a public highway, indorse his signature on the back of his operator's license in a space provided for the purpose. Operators' licenses shall expire at midnight on the last day of February in each year. Any person who shall violate the provisions of this section shall be fined not more than twenty-five dollars for the first offense and for any subsequent offense not more than fifty dollars.

SEC. 21. *Operators of public service motor vehicles to have special license.* No person shall operate a public service motor vehicle upon any public highway of the

state until he shall have obtained from the commissioner a special license for such purpose, and no such license shall be issued until said commissioner is satisfied that such applicant is a proper person to receive the same and already holds a regular operator's license. Such public service motor vehicle operator's license shall be of a special form and shall state the name, place of residence and post office address of the licensee, the public service motor vehicle operator's number assigned to him and such other information as said commissioner may prescribe. Said commissioner shall not issue a public service motor vehicle operator's license until the applicant has presented to him satisfactory evidence, under oath, to prove that such applicant has no criminal record and that no reason exists for refusing a public service motor vehicle operator's license to such applicant. Any applicant for such a license who is refused by said commissioner may, within thirty days from the date of such refusal, appeal from the decision of said commissioner to the attorney-general and if, upon such appeal, said attorney-general shall, notwithstanding such refusal on the part of said commissioner, determine that the character of the applicant is such that he ought to have such license, he may direct the commissioner of motor vehicles to issue the same. Any operator who shall violate any provision of this section shall be fined not more than fifty dollars.

C.

FEES.

SEC. 22. (a) The commissioner shall determine the carrying capacity of each commercial motor vehicle and the weight of each tractor equipped with rubber tires regardless of the total piston displacement or horse power

thereof and shall collect fees for registration based on such capacity or weight, as the case may be, as follows: When all surfaces in contact with the ground shall be equipped with pneumatic tires, the fee for a commercial motor vehicle of the capacity of one-half ton or less shall be fifteen dollars; one ton, twenty-two and one-half dollars; one and one-half tons, thirty dollars; two tons, thirty-seven and one-half dollars; two and one-half tons, forty-five dollars; three tons, fifty-two and one-half dollars; three and one-half tons, sixty dollars; four tons, sixty-seven and one-half dollars. For all other commercial motor vehicles and for all other tractors equipped with rubber tires, the fee for registration shall be as follows: When the capacity of such commercial motor vehicle or the weight of such tractor, as the case may be, shall be one ton or less, thirty dollars; one and one-half tons, forty dollars; two tons, fifty dollars; two and one-half tons, sixty dollars; three tons, seventy dollars; three and one-half tons, ninety dollars; four tons, one hundred thirty-seven and one-half dollars; four and one-half tons, one hundred sixty-two and one-half dollars; five tons, one hundred eighty-seven and one-half dollars; five and one-half tons, two hundred eighteen and three-quarters dollars; six tons, two hundred fifty dollars; and when the capacity of such motor vehicle shall be above six tons, the fee shall be two hundred and fifty dollars plus one hundred dollars for each ton above six; provided, if the capacity of any commercial motor vehicle or the weight of any such tractor shall be between any two of the above ratings, the fee for registration shall be based on the rating next highest. (b) The commissioner shall determine the total piston displacement of all motor vehicles other than commercial and other than those driven by steam or electric power. The formula for such determination shall be: The diameter of the bore in inches squared,

multiplied by 0.7854, multiplied by the length of the stroke in inches, multiplied by the number of cylinders. He shall collect fees for the registration of each motor vehicle and of each motorcycle at the rate of eight cents for each cubic inch or fractional part thereof of said total piston displacement. (c) For the registration of each public service motor vehicle other than a jitney, with a seating capacity of seven or less, the commissioner shall compute the fee based upon the total piston displacement or the carrying capacity or, if such motor vehicle shall be driven by steam or electricity, the horse power; and shall charge for such registration the sum of fifteen dollars plus the highest fee of the three so computed. When the seating capacity of such motor vehicle shall be in excess of seven and not above twenty, there shall be added to the fee hereinbefore provided the sum of two dollars for each seat so in excess; when the seating capacity of such motor vehicle shall be in excess of twenty and not above forty there shall be added to the fee hereinbefore provided the sum of five dollars for each seat so in excess; and for each seat which shall be in excess of forty, there shall be added to the fee hereinbefore provided the sum of ten dollars. (d) For the registration of each jitney with a seating capacity of five or less, the commissioner shall compute the fee based upon the total piston displacement or the carrying capacity or, if such motor vehicle shall be driven by steam or electricity, the horse power; and shall charge for such registration the sum of fifteen dollars plus the highest fee of the three so computed. For each seat in excess of five and not over twenty, there shall be charged an additional fee of two dollars; for each seat in excess of twenty and not over forty, there shall be charged an additional fee of five dollars; and for each seat in excess of forty, there shall be charged an additional fee of ten dollars. (e) For the registration of a passenger and commercial motor ve-

hicle, the commissioner shall compute the fee based upon the total piston displacement or the carrying capacity or, if such motor vehicle shall be driven by steam or electricity, the horse power; and shall charge for such registration the sum of two dollars plus the highest fee of the three so computed. (f) For the registration of all motor vehicles, registered under a general distinguishing number and mark, owned or temporarily in the custody of a dealer or repairer, a fee shall be charged at the rate of ten dollars for each pair of number plates furnished, up to and including twelve pairs; provided no more than twelve pairs of number plates with the same distinguishing number and mark shall be issued to the same person, and the minimum fee for the registration of any dealer or repairer shall be fifty dollars; for the registration of any motor vehicle, registered under a special distinguishing number and mark, owned or temporarily in the custody of a dealer or repairer, there shall be charged a fee of twenty dollars; provided each dealer or repairer shall, in addition to the payment of the fee hereinbefore prescribed, furnish to the commissioner a bond satisfactory to him in the amount of one thousand dollars, conditioned upon compliance with all the laws of the state and the rulings of the commissioner concerning the use of such markers, or otherwise conditioned as the commissioner may direct, which bond shall be forfeited for any violation of its conditions, and the claim arising therefrom shall be settled or compromised subject to the approval of the commissioner. The commissioner may waive the provisions of this sub-section relating to the furnishing of a bond by any dealer or repairer when such dealer or repairer shall have been in business as a dealer or repairer more than five years without having been convicted of the violation of any provision of the motor vehicle laws or rulings of the commissioner. (g) For the registration of each elec-

tric or steam motor vehicle, there shall be charged a fee of seventy-five cents for each unit of actual horse power. (h) For the registration of all motorcycles, registered under a general distinguishing number and mark, owned, operated by, or in the custody of a manufacturer of, dealer in, or repairer of motorcycles, there shall be charged a fee at the rate of four dollars for each set of number plates furnished; provided no more than ten number plates with the same distinguishing number and mark shall be furnished. For the registration of any motorcycle, registered under a special distinguishing number and mark, owned, operated by, or in the custody of a manufacturer of, dealer in, or repairer of motorcycles, there shall be charged a fee of ten dollars. (i) For the transfer of the registration of a motor vehicle previously registered, except a motorcycle, and except as provided in section eleven, sub-section (b), there shall be charged a fee of one dollar. For the transfer of the registration of a motorcycle or a side car, previously registered, there shall be charged a fee of fifty cents. (j) For each motor vehicle engine owned by a manufacturer of motor vehicles, and tested or operated upon the highways of this state, there shall be charged a fee of two dollars; provided every manufacturer, except a manufacturer of motorcycles, shall, upon making application for registration as a manufacturer, pay to the commissioner a minimum fee of fifty dollars, for which he shall be entitled to receive five pairs of number plates, and shall pay at the rate of ten dollars per pair for each pair in excess thereof. There shall be issued no more than ten pairs of number plates with the same distinguishing number and mark to any one manufacturer. The amount paid for such number plates shall be credited on the total amount required to be paid by the manufacturer for the testing or operating of motor vehicle engines other than motorcycle engines; provided such manufacturer shall

make a written report, under oath, on or before December thirty-first, annually, to the commissioner, of the number of engines so tested or operated from December first of the year last preceding to and including November thirtieth of the year of such report; and provided such report shall show the use of more than twenty-five motor vehicle engines, other than motorcycle engines, so tested or operated during the preceding twelve months. No manufacturer's registration shall be issued for any year until the manufacturer applying for such registration shall have rendered to the commissioner a written report as hereinbefore provided, regardless of the number of engines tested or operated, and shall have paid to said commissioner any balance due on account of the year preceding. The minimum annual fee assessed against any manufacturer of motor vehicles shall be equal to twenty dollars for each set of number plates furnished. (k) The following fees shall be charged: For each additional copy of a certificate of registration or operator's license, fifty cents; for each set of number plates furnished in replacement of lost or mutilated plates, one dollar; for each set of number plates furnished in replacement of lost or mutilated plates of the same number as those lost or mutilated, five dollars; for each copy of an accident report, one dollar; for any other copy except printed lists of automobile owners or operators, sixty cents per page or fraction thereof; for the certification of any copy or record, fifty cents. (l) For each temporary registration for a period of ten days or less, when the motor vehicle shall be a passenger or dealer's car or motorcycle or side car, two dollars; when the motor vehicle shall be public service motor vehicle, two dollars per day; when the motor vehicle shall be a commercial motor vehicle under three tons capacity, five dollars; and when the capacity shall be over three tons, ten dollars. (m) There shall be charged a fee for each testing of any

device or accessory of an amount equal to the actual cost of such test plus twenty-five per centum, provided the minimum fee for each test shall be one hundred dollars. (n) No registration fee or operator's license fee shall be charged in respect to any motor vehicle owned by a municipality and used exclusively for the conduct of municipal business; or in respect to any motor vehicle, belonging to a military department, used exclusively for official business. (o) The commissioner may register a motorcycle with a side car under one registration, which shall cover the use of a motorcycle with or without such side car. (p) The minimum annual fee for any commercial motor vehicle shall be twenty-two and one-half dollars, provided the minimum annual fee for any commercial motor vehicle equipped with pneumatic tires shall be fifteen dollars; for any passenger motor vehicle, except an electric motor vehicle or a motorcycle, fifteen dollars; for any electric motor vehicle or any motorcycle, five dollars; for any steam motor vehicle, fifteen dollars. The minimum fee for a pro-rated registration shall be three dollars. (q) The commissioner may assess a fee to cover the cost of the collection of number plates, motor vehicle registration certificates or operators' licenses, upon the holders thereof; and such number plates, motor vehicle registration certificates or operators' licenses shall not be returned to the holder thereof or reissued until such fee is paid. (r) Whenever any check issued to the commissioner in payment of any fee, or for any other purpose, shall be returned as uncollectible, the commissioner may charge a fee of five dollars plus all protest fees to the person presenting such check to him to cover the cost of its collection. (s) There shall be charged a fee of three dollars for each operator's license and a fee of five dollars for each public service operator's license. (t) There shall be charged for each examination of an operator or for each

examination of any public service motor vehicle a fee of two dollars. (u) All fees provided for in this act shall be construed to be license fees imposed for the administration of this act and as compensation for the privilege of using the highways of this state, and to reimburse the state in whole or in part for injury done to the highways by the operation of motor vehicles. (v) For the registration of each motor hearse used exclusively for transportation of the dead, there shall be charged a fee based on cubic inch displacement or capacity, and the commissioner may furnish distinguishing number plates for any motor hearse. (w) For the registration of a trailer used exclusively for camping or any other recreational purpose, there shall be charged a fee of two dollars. For the registration of any other trailer there shall be charged the same fee as is provided for commercial motor vehicles in sub-section (a) of this section. The commissioner, with the approval of the highway commissioner, may permit any municipality to attach more than one trailer to a motor vehicle, which trailer may be used by such municipality in any work in connection with any governmental duty, and the commissioner shall determine the registration fees for the use of such additional trailers.

SEC. 23. *Change of operator's address or appearance of car.* (a) Each holder of a license for the operation of a motor vehicle or each holder of a certificate of registration of a motor vehicle issued by the commissioner of motor vehicles shall, within forty-eight hours of any change of his address, notify the commissioner of motor vehicles of such change of address, which notification shall include his old and his new address. (b) Every such holder who shall substantially change the appearance or mechanical equipment of a car registered by him, unless such change intended is specified in the original registra-

tion, so that such motor vehicle shall no longer conform to the description contained in the application for or certificate of registration shall, within forty-eight hours of such change, notify the commissioner of motor vehicles of such change. (c) Any person who shall violate any provision of this section shall be fined not more than ten dollars for each offense.

PART V.

EQUIPMENT.

SEC. 40. *Mechanical equipment.* (a) Every motor vehicle, except a motorcycle or motorcycle and side car, while in use upon the highway, shall be provided with at least two systems of brakes, each system of which shall be independent from the other, and of sufficient power to lock the wheels of the motor vehicle while such motor vehicle is in motion. (b) Every motorcycle or motorcycle and side car shall have at least one brake of sufficient power to lock a wheel of such motorcycle. (c) Every motor vehicle operated by an internal combustion engine shall be provided with a muffler or other suitable device to muffle or silence the exhaust of such engine, which shall be so constructed that the individual explosions of such engine cannot be heard at a distance of one hundred and fifty feet or more from such motor vehicle. No muffler cut-out or other device to free the exhaust shall be used. (d) Every motor vehicle upon any public highway shall have a suitable horn or other audible signaling device, capable of producing a sound sufficiently loud to serve as an adequate warning of danger. No person shall use while operating any vehicle, except fire apparatus or police patrols, any siren horn without written permission from the commis-

sioner of motor vehicles, which written permission shall at all times be carried upon the motor vehicle and produced on the request of any proper officer. (e) Each motor vehicle shall be so operated, equipped, constructed and adjusted as to prevent unnecessary noise. No article shall be attached to any motor vehicle in such manner as to interfere with an unobstructed view of the highway upon which any person shall be operating such motor vehicle. (f) Any person who shall violate any provision of this section shall be fined not more than fifty dollars for each offense. (g) The commissioner of motor vehicles, by himself or an inspector authorized by him, and any commissioner or officer of the state police department, may examine any motor vehicle, its number, equipment and identification. Any person who shall wilfully interfere with or obstruct or attempt to interfere with or obstruct any such examination shall be fined not more than fifty dollars or imprisoned not more than thirty days or both.

SEC. 41. *Lights.* (a) Every motor vehicle, except a motorcycle operated upon the highways of the state during the period from one-half hour after sunset to one-half hour before sunrise, and whenever smoke or weather conditions render it impossible to see at least two hundred feet ahead of such motor vehicle, shall display, when running, at least two lighted lamps upon the forward part of such motor vehicle, one on each side and approximately of equal candle power, which lights in clear weather shall be visible not less than five hundred feet in the direction in which such motor vehicle is proceeding and the top of each of such lamps shall be not over fifty-six inches from the ground, and every motorcycle so operated shall display at least one light on the forward part thereof, which light in clear weather shall be visible not less than five hundred feet in the direction in which such motorcycle is proceed-

ing. Every motor vehicle so operated shall display a red light from behind, and a white light shall be so arranged as to illuminate a rear number plate as provided by law. (b) No headlight shall be used on any motor vehicle upon any highway except such headlights as shall be installed with a device which shall prevent glare, which device shall have been approved and certified by the commissioner and which device shall be applied and adjusted in accordance with the requirements of the certificate of approval; provided the commissioner may refuse a certificate of approval for any headlight device submitted for test for any reason which he may deem sufficient and may refuse such certificate for any such device which shall absorb, stop or diffuse more than forty per centum of the light. The commissioner may, upon application, allow the installation upon one or more motor vehicles of any device for the purpose of testing such device, upon such terms and conditions as he may deem reasonable. (c) Whenever there is not sufficient light within the limits of the traveled portion of the highway to make all vehicles, persons or objects clearly visible within a distance of at least two hundred feet, the forward lights which a motor vehicle as herein provided is required to display shall, when the vehicle is in motion, throw sufficient light ahead to show any person, vehicle or object upon the roadway straight ahead of such motor vehicle for a distance of at least two hundred feet. (d) No lamp or bulb prescribed in this act shall be of more than twenty-one mean spherical candle power. (e) No spotlight shall be used when an approaching motor vehicle is in sight, except when projecting its rays directly on the ground at a distance not exceeding sixty feet in front of the vehicle using such spotlight and to the right of the axis or center of such motor vehicle. (f) Every motor vehicle, when standing upon a public highway during the period from one-half hour after sunset to one-half hour

before sunrise, shall show at least one light in front, such light to be on the side nearest to the center of the road and shall display at least one red light in the rear, provided this provision shall not apply to any motor vehicle in a place and under conditions where there is sufficient artificial light to make such motor vehicle clearly visible from a distance of not less than two hundred feet in every direction. (g) No person shall display upon any motor vehicle any light visible from the front thereof other than white or amber tinted, or any light other than red or white visible from the rear thereof, except a light used with any signalling device, without a written permit from the commissioner of motor vehicles; provided the commissioner may require any commercial motor vehicle more than six feet in width to carry such lights as he shall direct, for the purpose of showing the width of such commercial motor vehicle, and provided any jitney may carry a purple light or lights in the front thereof as the commissioner may permit. (h) Any person who shall violate any provision of sub-section (a), (b), (c), (d) or (e) of this section shall be fined not more than fifty dollars for a first offense and for a subsequent offense not more than one hundred dollars. Any person who shall violate any provision of sub-section (f) of this section shall be fined not more than fifty dollars. Any person who shall violate any provision of sub-section (g) of this section shall be fined not more than ten dollars for each offense.

SEC. 42. *Weight of commercial motor vehicles.* Every commercial motor vehicle shall have conspicuously in view on each side of the body of such vehicle near to the driver's seat a plate of permanent marking showing the maximum carrying capacity in pounds of such vehicle, the light weight in pounds of such vehicle, and the maximum speed of such vehicle when in running order: "Max. cap'y (In-

sert here capacity in pounds)"; "Lt. Wt. (Insert here weight in pounds)"; "Max. Sp. M. P. H. (Insert here rate of speed in miles per hour)"; the lettering to be not less than one inch in height and each stroke not less than three-sixteenths of an inch wide. Any person who shall violate any provision of this section shall be fined not more than fifty dollars for a first offense, and for a subsequent offense not more than one hundred dollars.

SEC. 43. *Tires.* Every motor vehicle shall be equipped with tires of rubber, or other elastic substance approved by the highway commissioner, and the wheels shall be so constructed that no metal part of the wheel or tire may be in contact with the surface of the road at any time when such vehicle is in motion upon the highway. No commercial motor vehicle shall be so constructed or loaded that the weight on the wheels of any axle shall be less than twenty per centum of the gross weight of the vehicle and load. Commercial motor vehicles equipped with solid rubber tires shall not exceed eight hundred pounds weight of load per inch width of rubber when measured at the steel channel of the rubber tire. No solid rubber tire of less than five inches in width when measured at the steel channel of the rubber tire shall have a thickness of less than seven-eighths of an inch when measured above the outside edge of the steel channel of such tire. No solid rubber tire of more than six and less than eight inches in width measured at the steel channel of such tire shall have a thickness of less than one inch above the outside edge of such steel channel. No solid rubber tire of more than eight inches in width measured at the steel channel of such tire shall have thickness of less than one and one-eighth inches when measured above the outside edge of such steel channel. Any person who shall violate any provision of this section shall be fined not

more than fifty dollars for a first offense and for a subsequent offense not more than one hundred dollars.

SEC. 44. *Mirror.* Every commercial motor vehicle so constructed or which may be so loaded that the operator is prevented from having a free and unobstructed view of the highway immediately to the rear and at the sides of the same shall be equipped with a mirror or reflector attached to and so located and adjusted on such vehicle as to give the operator thereof a clear reflected view of the highway directly to the rear on a line parallel to the side of the body of such motor vehicle. Any person operating a motor vehicle so constructed or which may be so loaded shall keep a constant observation of the approach of vehicles from the rear and when so approached or overtaken shall drive to his extreme right of the traveled way as promptly as safety will permit, giving the vehicle approaching from the rear opportunity to pass in safety. Any person who shall violate any provision of this section shall be fined not more than fifty dollars.

APPENDIX B.

CHAPTER 77.

Public Acts 1921.

AN ACT CONCERNING PUBLIC SERVICE MOTOR VEHICLE OPERATING OVER FIXED ROUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. The term "public service motor vehicle" shall include all motor vehicles used for the transportation of passengers for hire. The term "jitney" shall include any public service motor vehicle operated in whole or in part upon any street or highway in such manner as to afford a means of transportation similar to that afforded by a street railway company, by indiscriminately receiving or discharging passengers; or running on a regular route, or over any portion thereof; or between fixed termini.

SEC. 2. Every person, association or corporation owning or operating a jitney is hereby declared a common carrier and subject as such to the jurisdiction of the public utilities commission, and, while so operating, to such reasonable rules and regulations as said commission may prescribe with respect to routes, fares, speed, schedules, continuity of service and the convenience and safety of passengers and the public.

SEC. 3. No person, association or corporation shall operate a jitney until the owner thereof shall have obtained a certificate from the public utilities commission

specifying the route over which such jitney may operate and the service to be furnished, and that the public convenience and necessity require its operation over such route. Such certificate shall be issued only after written application for the same has been made. Upon receipt of such application said commission shall fix a time and place of hearing thereon, which shall be in a town within which such route or a part thereof is proposed, and shall give notice of the pendency of such application and of the time and place of hearing thereon to such applicant, the mayor of the city, the warden of the borough or the first selectman of each town in or through which the applicant desires to operate, and to any common carrier operating over any portion of such route or over a route substantially parallel thereto, and public hearing held thereon. Any town, city or borough within which, or between which and any other town, city or borough in this state, any such common carrier is furnishing service, may bring a written petition to the commission in respect to routes, fares, speed, schedules, continuity of service and the convenience and safety of passengers and the public. Thereupon the commission shall fix a time and place for a hearing upon such petition, and shall mail notice thereof to the parties in interest and give due notice thereof at least one week prior to such hearing. The commission may amend or revoke any certificate.

SEC. 4. The owner or operator of every jitney shall display in a conspicuous place therein such certificate or a certified copy thereof.

SEC. 5. Upon the granting of a certificate of necessity and convenience as hereinbefore provided for, the commissioner of motor vehicles shall have jurisdiction over the registration of any jitney and over the licensing of its operator, its lighting, safety and sanitary conditions.

SEC. 6. Every jitney shall carry markers to be furnished by the motor vehicle commissioner, which markers shall indicate that such vehicle is licensed for jitney service.

SEC. 7. Any person, association or corporation aggrieved by any act or order of the public utilities commission may appeal to the superior court in the same manner and with the same effect as any person, association or corporation may appeal from orders relating to street railway corporations.

SEC. 8. Any person or the officers of any association or corporation who shall violate any order, rule or regulation adopted or established under the provisions of this act or any provision hereof, shall be fined not more than one hundred dollars or imprisoned not more than sixty days or both.

SEC. 9. Upon the passage of this act the public utilities commission is authorized to make such rules and regulations, to hold hearings and issue such certificates as may be required under the provisions of this act. Any such certificate shall not become effective until ninety days after the passage of this act.

SEC. 10. The provisions of section nine of this act shall take effect from its passage; all other provisions of this act shall take effect ninety days after its passage.

APPENDIX C.

CHAPTER 54.

Public Acts 1925.

An Act Concerning a Uniform System of Accounts and Reports of Jitney Operations.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Any person, firm, corporation or other organization holding a certificate of public convenience and necessity to operate a jitney issued by the public utilities commission shall keep an account of his or its financial condition in accordance with a uniform system of accounts to be prescribed by the commission, and every such person, firm, corporation or other organization operating under any such certificate shall report to said commission annually, on or before the first day of March in each year, his or its financial condition as of the thirty-first day of the preceding December, on a form to be furnished by the commission. Each such report shall be signed and sworn to by the person, a member of the firm or an officer of the corporation or other organization operating such jitney service. Each person, firm, corporation or other organization failing to make the report as herein provided shall forfeit to the state twenty-five dollars for each day of such failure, and the commission shall report such forfeiture to the attorney general, who shall collect the same.

SUPREME COURT OF THE UNITED STATES.

No. 197.—October Term, 1927.

Interstate Busses Corporation, Appellant, *vs.* William H. Blodgett, Tax Commissioner of the State of Connecticut; Ernest E. Rogers, Treasurer of the State of Connecticut, Frederick M. Salmon, etc., et al.	Appeal from the District Court of the United States for the District of Connecticut.

[February 20, 1928.]

Mr. Justice Stone delivered the opinion of the Court.

The appellant, complainant below, is a Connecticut corporation engaged in the transportation of passengers in motor buses, exclusively in interstate commerce, between Connecticut and points in Massachusetts and Rhode Island. The present suit was brought in the district court for Connecticut to restrain appellees, tax officials of the state, from levying a tax on appellant under a Connecticut statute, Conn. Pub. Acts 1925, c. 254, on the ground that the tax is an unconstitutional burden on interstate commerce. Application to a court of three judges for an interlocutory injunction under Jud. Code § 266 was denied, 19 Fed. (2d) 256, and on final hearing the court dismissed the bill on the merits. The application for the preliminary injunction having been pressed to a determination before the court of three judges, the case is properly here on direct appeal from the final decree of that court. Jud. Code §§ 238, 266; *Smith* v. *Wilson*, 273 U. S. 388; *Clark* v. *Poor*, 274 U. S. 554.

The appellant has already complied with the general statutes of Connecticut requiring the registration of motor vehicles. Part II § 1 of the act in question imposes a tax of one cent for each mile of highway traversed by any motor vehicle used in interstate commerce "as an excise on the use of such highway." By Part II § 4

the proceeds of the tax are to be applied to the maintenance of public highways in the state.

Appellant objects to the tax as an infringement of the paramount power of Congress to regulate interstate commerce or at least as a discrimination against that commerce. It is not denied that a state may impose a registration or license fee on those using motor vehicles in the state, although engaged in interstate commerce, or that the state may impose a reasonable charge for the use of its highways by motor vehicles so employed, *Hendrick* v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160; *Clark* v. *Poor, supra*, and there is no evidence that the tax here is in itself an unreasonable charge for the privilege. But it is said that the particular scheme of taxation adopted by Connecticut imposes this tax in addition to statutory charges already made for the use of the highways in interstate commerce, and both in purpose and in effect discriminates against appellant and in favor of those operating motor vehicles in intrastate commerce.

The state has adopted a system of financing its highway construction and maintenance under which about 80% of the cost is collected from fees for the registration of motor vehicles and for operators' licenses, from taxes on the sale of gasoline and from fines and penalties for violations of the motor vehicle laws. The balance of the cost is paid from general appropriations by the state legislature and a certain amount received under federal aid legislation. Appellant, it is conceded, pays certain taxes imposed alike on those engaged in intrastate and interstate commerce. These include a personal property tax upon its motor cars used in the state, a registration or license fee for each vehicle so used, and also, it is urged, a tax of two cents a gallon on the sale of gasoline within the state which in practice is absorbed by the consumer in the purchase price.

But no mileage tax like that imposed by Part II § 1 is levied upon those using motor vehicles in intrastate commerce. Instead, Part I § § 2 and 3 of the act under discussion subject all companies engaged in intrastate motor bus transportation to an excise of 3% of their gross receipts less such taxes as they have paid locally on their "real and tangible personal estate." By Part I § 6 this excise is declared to be in lieu of all taxes on intangible personal property. Moreover, those who pay it are exempt from the income tax

of 2% imposed generally on corporations, including, apparently, the appellant. Conn. Gen. Stat., c. 73, as amended. It like the mileage tax is devoted to the maintenance of highways.

To show that the mileage tax is discriminatory appellant first points out the obvious differences between it and the gross receipts tax and, secondly, relies on an uncontradicted allegation in the bill of complaint that, apart from the mileage tax, it already contributes to the maintenance of the highways of the state in the same manner and to the same extent as others in the payment of the personal property tax, the license tax on buses and the shifted gasoline tax.

The two statutes are complementary in the sense that while both levy a tax on those engaged in carrying passengers for hire over state highways in motor vehicles, to be expended for highway maintenance, one affects only interstate and the other only intrastate commerce. Appellant plainly does not establish discrimination by showing merely that the two statutes are different in form or adopt a different measure or method of assessment, or that it is subject to three kinds of taxes while intrastate carriers are subject only to two or to one. We cannot say from a mere inspection of the statutes that the mileage tax is a substantially greater burden on appellant's interstate business than is its correlative, the gross receipts tax, on comparable intrastate businesses. To gain the relief for which it prays appellant is under the necessity of showing that in actual practice the tax of which it complains falls with disproportionate economic weight on it. *General Tank Car Corp.* v. *Day*, 270 U. S. 367; *Hendrick* v. *Maryland, supra; Interstate Busses Corp.* v. *Holyoke Street Ry.*, 273 U. S. 45, 51. The record does not show that it made any attempt to do so.

That appellant is already contributing to highway maintenance is not in itself significant, for the state does not exceed its constitutional power by imposing more than one form of tax as a charge for the use of its highways in interstate commerce. It is for appellant to show that the aggregate charge bears no reasonable relation to the privilege granted.

It is further objected that the provision of the state statute, Part II § 3, authorizing the suspension of registration as a remedy for the nonpayment of the mileage tax, is invalid in any case, since payment of even a lawful tax may not be enforced by the

exclusion of the taxpayer from interstate commerce. *Western Union Telegraph Co.* v. *Massachusetts,* 125 U. S. 530; *St. Louis & Southwestern R. R.* v. *Arkansas,* 235 U. S. 350. And it is not denied that appellees have threatened to invoke § 3 against appellant. But we need not consider here whether the principle relied on goes so far as to prevent a state from excluding from its highways a motor carrier which refuses to pay a charge for their use. Compare *Hendrick* v. *Maryland, supra; Kane* v. *New Jersey, supra; Clark* v. *Poor, supra.* Here the relief sought presupposes that the tax is unconstitutional. That point being determined against appellant we shall not assume that it will persist in its refusal to pay the tax.

Objections of less moment, which we have considered, do not require comment.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.